

MISSY DAVIS - April 19, 2022

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
CASE NO. 5:19-CV-00615

FRANCISCO CANTU, ET AL.,
Plaintiffs

V.

MAMMOTH ENERGY SERVICES, INC., ET AL.,
Defendants

DEPONENT: MISSY DAVIS

DATE: APRIL 19, 2022

REPORTER: SOPHIE JONES

**GOOD TO GO PROCESS SERVICE
713-351-7061**

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Page 2		Page 4	
1	APPEARANCES	1	EXHIBITS (CONTINUED)
2		2	
3	ON BEHALF OF THE PLAINTIFFS, FRANCISCO CANTU, ET AL.:	3	191 - Email Chain - MAMMOTH003265-66 75
4	David Moulton, Esquire	4	192 - Email Chain - MAMMOTH003492-3506 82
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11	(Appeared via videoconference)	11	
12		12	
13	ON BEHALF OF THE DEFENDANTS, MAMMOTH ENERGY SERVICES,	13	
14	INC., ET AL. AND MISSY DAVIS:	14	
15	M. Harris Stamey, Esquire	15	
16	Porter Hedges	16	
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22		22	
23	Also Present: Esther Heath, Videographer; Anthony	23	
24	Arteaga, Paralegal at Porter Hedges (Appeared via	24	
25	videoconference)	25	
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1	INDEX	1	STIPULATION
2		2	
3	PROCEEDINGS	3	The video deposition of MISSY DAVIS was taken at HOLIDAY
4	DIRECT EXAMINATION BY MR. MOULTON	4	INN EXPRESS & SUITES, 234 MIDTOWN BOULEVARD,
5	CROSS EXAMINATION BY MR. STAMEY	5	MADISONVILLE, KENTUCKY 42431 on TUESDAY the 19TH day of
6		6	APRIL 2022 at approximately 9:30 a.m. CST; said video
7	EXHIBITS	7	deposition was taken pursuant to the FEDERAL Rules of
8	Exhibit	8	Civil Procedure.
9	186 - Recruiting Emails	9	
10	138 - 5 Star Orientation Handout	10	It is agreed that SOPHIE JONES, being a Notary Public
11	187 - 5 Star Offer of Employment Letter	11	and Court Reporter, may swear the witness and that
12	151 - Crew Wage Scale for 2017 Puerto Rico	12	the reading and signing of the completed transcript
13	Storm Rates and Stand By Rates for Cobra	13	by the witness is not waived.
14	Energy and Subsidiaries	14	
15	166 - Email Chain - MAMMOTH003290-91	15	
16	188 - Email Chain - MAMMOTH003297-99	16	
17	189 - Email Chain - MAMMOTH003287-89	17	
18	179 - Email Chain - MAMMOTH003300-02	18	
19	180 - Email Chain - MAMMOTH003445-46	19	
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21	183 - Email Chain - MAMMOTH003143-44	21	
22	184 - Excel Spreadsheet - MAMMOTH003145	22	
23	190 - Email Chain - MAMMOTH003255-56	23	
24	162 - Email Chain - MAMMOTH003468-69	24	
25		25	

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<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 VIDEOGRAPHER: We're now on the record.</p> <p>4 My name is Esther Heath. I'm the videographer today</p> <p>5 and Sophie Jones is the court reporter. Today is</p> <p>6 the 19th day of April 2022. The time is 9:30 a.m..</p> <p>7 We are at the Holiday Inn Express and Suites located</p> <p>8 at 234 Midtown Boulevard, Madisonville, Kentucky to</p> <p>9 take the deposition of Missy Davis in the matter of</p> <p>10 Francisco Cantu, et al. versus Mammoth Energy</p> <p>11 Services, Inc., et al. Pending in the United States</p> <p>12 District Court for the Western District of Texas.</p> <p>13 Case number 519-CV-00615. Will counsel please</p> <p>14 identify themselves for the record?</p> <p>15 MR. STAMEY: Harris -- go ahead, David.</p> <p>16 MR. MOULTON: This is David Moulton for the</p> <p>17 plaintiffs. Good morning.</p> <p>18 MR. STAMEY: And this is Harris Stamey, and I'm</p> <p>19 here with witness Missy Davis, or Melissa Davis.</p> <p>20 VIDEOGRAPHER: Okay. Thank you. Ms. Davis,</p> <p>21 will you please raise your right hand for the</p> <p>22 reporter?</p> <p>23 COURT REPORTER: Do you solemnly swear or</p> <p>24 affirm that the testimony you're about to give will</p> <p>25 be the truth, the whole truth, and nothing but the</p>	<p style="text-align: right;">Page 8</p> <p>1 deposition; is that fair?</p> <p>2 A Yes. Let me -- I'm turning my phone off right</p> <p>3 now. Sorry.</p> <p>4 Q Yeah. That's fine.</p> <p>5 A Okay.</p> <p>6 Q Okay. Now, Ms. Davis, could you tell me what</p> <p>7 your current address is?</p> <p>8 A Yes, it's 925 Dockery Road, and that's in</p> <p>9 Dawson Springs, Kentucky, 42408.</p> <p>10 Q And what is your date of birth, please?</p> <p>11 A 3-11-77.</p> <p>12 Q And what -- who is your current employer?</p> <p>13 A Groves Electrical Services.</p> <p>14 Q And can you give me their address?</p> <p>15 A 3135 Grapevine Road, and that's in</p> <p>16 Madisonville, Kentucky, 42431.</p> <p>17 Q What is your cell phone number?</p> <p>18 A 270-871-3519.</p> <p>19 Q Do you use any other cell phones?</p> <p>20 A Yes, I do have a work cell phone for Groves.</p> <p>21 Q Okay. Can I get that number, as well?</p> <p>22 A Yeah, I have to look it up. I don't know what</p> <p>23 it is. I haven't been there very long.</p> <p>24 It is 270-584-2941.</p> <p>25 Q Do you have an all office phone with Groves?</p>
<p style="text-align: right;">Page 7</p> <p>1 truth?</p> <p>2 THE WITNESS: I do.</p> <p>3 COURT REPORTER: Counsel, you may proceed.</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. MOULTON:</p> <p>6 Q Good morning, Ms. Davis. Thank you for coming</p> <p>7 in to provide testimony today in this case. Before we</p> <p>8 get started, can you please state your full name for the</p> <p>9 record?</p> <p>10 A It's Melissa Lynn Davis, and most people refer</p> <p>11 to me as Missy.</p> <p>12 Q And for the record, also, Ms. Davis, can you</p> <p>13 identify everyone that's in there in the room with you?</p> <p>14 A I hope. There is Harris --</p> <p>15 Q Okay.</p> <p>16 A -- Jamie, and I'm sorry, I'm terrible with</p> <p>17 names, but we do have a videographer and a court</p> <p>18 reporter.</p> <p>19 Q Okay. Is there anyone else in the room?</p> <p>20 A No.</p> <p>21 Q Okay. Are you -- and then just to -- just for</p> <p>22 the record to make sure, I'll ask that you, during this</p> <p>23 deposition, not communicate, you know, other than what</p> <p>24 we're doing on this video right here, in other words, no</p> <p>25 texting, no e-mailing with other folks during the</p>	<p style="text-align: right;">Page 9</p> <p>1 A Yes. 270-825-1437, and my extension is 165.</p> <p>2 Q How long had you been working for Groves?</p> <p>3 A Started there February 8 of this year.</p> <p>4 Q Okay. And where were you working at</p> <p>5 immediately prior to Groves?</p> <p>6 A The City of Madisonville.</p> <p>7 Q Okay. How long have you worked for them?</p> <p>8 A Started in May 2021 when I left Five Star and</p> <p>9 went to the City and worked until February 7 of this</p> <p>10 year.</p> <p>11 Q With Groves, what is your current position?</p> <p>12 A I'm the accounts receivable manager.</p> <p>13 Q With the City of Madisonville, what was your</p> <p>14 position?</p> <p>15 A Human Resources Manager.</p> <p>16 Q With Five Star, what was your position?</p> <p>17 A Human Resource Manager.</p> <p>18 Q And how many -- can you give me your dates of</p> <p>19 employment approximately with Five Star?</p> <p>20 A I believe I started with them in August 2016</p> <p>21 and went until May 2021.</p> <p>22 Q Okay. And do you recall how you got your job</p> <p>23 at Five Star?</p> <p>24 A I do. I was contacted via -- I think it was</p> <p>25 Facebook or text message by Samantha Nall. She told me</p>

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<p style="text-align: right;">Page 10</p> <p>1 that there was an opening for a HR manager with Five 2 Star and asked if I'd be interesting -- interested in 3 applying for the position. 4 Q Okay. So did you already know Ms. Nall from 5 before? 6 A I did. 7 Q Okay. How are you-all acquainted? 8 A We worked together at Hendricks Electric and 9 T&D Solutions. 10 Q Okay. 11 A Several years ago. 12 Q Right. Okay. And so, you know, of course you 13 worked with Mr. Scott WhitSELL; is that right? 14 A I did. 15 Q Okay. And for how long were you working for 16 Mr. WhitSELL? 17 A At Five Star? 18 Q Yeah. 19 A Well, from 2016 to 2021 I worked at Five Star. 20 Q Okay. So the entire time, Mr. WhitSELL 21 would've -- I think probably would've been one of your - 22 - one of the people you would report to? 23 A Correct. 24 Q Okay. When you were working at Five Star, 25 particularly during the Puerto Rico time, who all did</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Okay. And Michelle Poling, what -- who did 2 you understand her employer to be? 3 A Cobra Energy. I'm not sure which Cobra entity 4 she was technically worked for. I just know it was 5 Cobra. 6 Q Okay. Do you know who she would report to? 7 A Keith Ellison. 8 Q And he was the president of Cobra? 9 A Yes. 10 Q Alex Kalman, which company was he with? 11 A Mammoth Energy. 12 Q Okay. And also -- and Jeff Beagle also 13 would've been with Mammoth, as well? 14 A I believe so. 15 Q Okay. Are you related to anyone that's 16 currently in -- working with Mammoth or its 17 subsidiaries? 18 A I don't believe so. Well -- oh, let me take 19 that back. My husband is still a current employee of 20 Five Star Electric. 21 Q Oh, okay. What is his name? 22 A Charles Jason Davis. 23 Q And what does he do for Five Star? 24 A He's a lineman. 25 Q Okay. Any other relatives that work with</p>
<p style="text-align: right;">Page 11</p> <p>1 you report to? 2 A During the entire time of Puerto Rico or just 3 during a certain time period? 4 Q If it changed -- 5 A Yeah, it did. 6 Q -- let's -- it did? Okay. Let's kind of walk 7 through that process, then. Like at the beginning of 8 the Puerto Rico project, who were you reporting to? 9 A I felt like my immediate supervisor would've 10 been Samantha Nall, the way that it was set up, and -- 11 for anything administrative, basically. And then 12 anything operational would've been Scott WhitSELL. 13 As time went on, it did sort of change as Puerto Rico 14 evolved. So at one point they changed who I reported 15 to, moreso to the -- Michelle Poling as -- once she came 16 on board. She was hired by Cobra Energy as a Director 17 of Administration and HR was her title, and it sort of 18 switched to answering over to her. Anything human 19 resource related, or payroll related in the beginning, 20 I would've referred to Alex Kalman or Jeff Beagle. 21 Q Okay. So to kind of go through some of these 22 names. I think -- did -- was it your understanding that 23 Samantha Nall was an employee of Five Star, or was she 24 employed by Cobra? Or is she a Mammoth person? 25 A She was Five Star Electric.</p>	<p style="text-align: right;">Page 13</p> <p>1 Mammoth or its subsidiaries? 2 A I don't think so. I can't think of anyone. 3 Q Do you still talk with anyone at Mammoth and 4 its subsidiaries other than your husband? 5 A Oh, sure. 6 MR. STAMEY: Objection to form. 7 Q Yeah. I'm sorry? I didn't hear your answer, 8 Ms. Davis. 9 MR. STAMEY: You can answer it even though I 10 object. 11 A Okay. I do still communicate -- 12 Q Okay. 13 A -- with friends that I have. 14 Q Right. Can we -- can you name some of -- 15 well, can you name the friends that you have that you 16 still communicate with at Mammoth? 17 A Mammoth or Five Star? It's different. 18 Q Both. 19 A Okay. The only person I've communicated with 20 recently at Mammoth would've been Marty Whimmer over my 21 husband's short-term disability claims, but nothing 22 personal. I talk to Samantha Nall at Five star 23 electric. I talked to Scott WhitSELL at Five Star 24 Electric. My neighbor works for Five Star Electric. 25 So I mean -- who else? I occasionally talk with Jerrell</p>

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<p style="text-align: right;">Page 14</p> <p>1 Rich who took my place at Five Star Electric. I've been</p> <p>2 and had lunch with friends at Five Star Electric, not</p> <p>3 recently, but since I left Five Star. So it -- those</p> <p>4 are the main ones that I talk to.</p> <p>5 Q Okay. And what I wanted to know particularly,</p> <p>6 I don't necessarily want to know about you and your</p> <p>7 neighbors' backyard barbecue plans, but what I do want</p> <p>8 to know about is whether with any of the folks you just</p> <p>9 mentioned that still work at Five Star that you still</p> <p>10 communicate with, in regards to this case, what have</p> <p>11 you-all spoken about?</p> <p>12 A Just that there is a case with -- I've talked</p> <p>13 to Sam and Scott Whitself just to tell them that I was</p> <p>14 being subpoenaed.</p> <p>15 Q Okay. And what did -- what else did you-all</p> <p>16 talk about? You said you were getting subpoenaed.</p> <p>17 What did they say?</p> <p>18 A "That sucks."</p> <p>19 Q It's true. Right? Okay. Right? Okay.</p> <p>20 Did Mr. Whitself talk about his deposition at all?</p> <p>21 A No. I mean, I know he went. He did tell me</p> <p>22 he was going, but I didn't -- we didn't discuss what</p> <p>23 occurred at the deposition.</p> <p>24 Q Okay. And how long ago did you talk to</p> <p>25 Ms. Nall and Mr. Whitself that you had been subpoenaed?</p>	<p style="text-align: right;">Page 16</p> <p>1 A We did.</p> <p>2 Q Okay. What documents did you review?</p> <p>3 A Various e-mails.</p> <p>4 Q Okay. Do you remember the subjects of those</p> <p>5 e-mails?</p> <p>6 A Puerto Rico pay scales, pay plans, different</p> <p>7 things like that.</p> <p>8 Q Okay. Any other documents that you can</p> <p>9 recall?</p> <p>10 A Maybe a couple of spreadsheets, but -- that</p> <p>11 had explanation as to the pay plan and that sort of</p> <p>12 thing. But I don't -- can't think of anything else</p> <p>13 really.</p> <p>14 Q Okay. How many times have you ever given a</p> <p>15 deposition?</p> <p>16 A This is my first.</p> <p>17 Q You know what? And you're doing so well.</p> <p>18 You haven't -- I was thinking you were going to say 10</p> <p>19 because you're not talking over me and like not</p> <p>20 interrupting, not arguing. That's -- see, that's what</p> <p>21 -- the court reporter has to write everything down so</p> <p>22 it's good if we -- if you wait for me to finish my</p> <p>23 question, I'll try to wait for you to answer, that way</p> <p>24 she can get it all down; is that understood?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 A I'm not sure, like -- I'd have to look on my</p> <p>2 phone to tell you the last time I talked to him.</p> <p>3 Q Okay. Just approximately. Are we talking</p> <p>4 about like last week, a month ago, two months ago?</p> <p>5 A Probably in the last week.</p> <p>6 Q Okay. To prepare for your deposition today,</p> <p>7 can you describe to me anything that you did to get</p> <p>8 ready?</p> <p>9 MR. STAMEY: With the exception of discussions</p> <p>10 with counsel.</p> <p>11 Q And I'm not going to ask you what you-all</p> <p>12 talked about because that would obviously be privileged.</p> <p>13 But I can ask you, for example, if you did meet with a</p> <p>14 lawyer and how long you met, things like that, which we</p> <p>15 will ask you. But the general question is what did you</p> <p>16 do to prepare?</p> <p>17 A I met with Harris for a couple of hours.</p> <p>18 Q Okay. When did you-all meet?</p> <p>19 A Yesterday afternoon.</p> <p>20 Q Did you-all meet in person?</p> <p>21 A We did.</p> <p>22 Q Did you guys discuss the testimony of other</p> <p>23 folks in this case?</p> <p>24 A No.</p> <p>25 Q Did you-all review documents?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q Okay. Thank you, Ms. Davis. So I'm going to</p> <p>2 have -- I want to get everyone out of here at a</p> <p>3 reasonable time today, and I have some very specific</p> <p>4 questions that we're going to go through. I want -- I</p> <p>5 kind of go through things in chronological order.</p> <p>6 And I realize that at some point in my questions, you</p> <p>7 may want to be talking about things that happen later,</p> <p>8 and rest assured, we'll get to that. And if there's</p> <p>9 something I'm missing, I'm sure Mr. Harris will get to</p> <p>10 it. But I would ask that you focus on the question I'm</p> <p>11 asking and that way we can get through this in a</p> <p>12 reasonable and efficient manner; does that make sense?</p> <p>13 A Sure.</p> <p>14 Q Okay. So I want to talk to you about the</p> <p>15 beginning when Puerto Rico -- when the Puerto Rico work</p> <p>16 was starting up, that would've been about October 2017.</p> <p>17 Do you recall that?</p> <p>18 A Oh, yes.</p> <p>19 Q Okay. And based on what Mr. Whitself had</p> <p>20 testified to, it sounded like you were working with him</p> <p>21 to basically recruit workers to go to Puerto Rico for</p> <p>22 the restoration project; is that right?</p> <p>23 A That's correct.</p> <p>24 Q All right. And when you-all were doing the</p> <p>25 recruiting, you kind of put the word out through</p>

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<p style="text-align: right;">Page 18</p> <p>1 different channels, correct?</p> <p>2 A Yes.</p> <p>3 Q All right. And so, one of those channels,</p> <p>4 would've been the company's Facebook page?</p> <p>5 A That's right.</p> <p>6 Q All right. And another channel would've been</p> <p>7 Linejunk on Facebook.</p> <p>8 A Possibly.</p> <p>9 Q Yeah. Okay. And do you recall getting</p> <p>10 e-mails from folks saying that they'd seen the posting</p> <p>11 for work on Linejunk?</p> <p>12 A Absolutely. I -- well, I don't know about</p> <p>13 Linejunk specifically, but on Facebook, yes.</p> <p>14 Q Oh, okay. All right. When you would recruit,</p> <p>15 would you use Linejunk?</p> <p>16 A You know, I don't remember.</p> <p>17 Q Okay.</p> <p>18 A It's possible, but I don't remember.</p> <p>19 Q All right. Do you know what Linejunk is?</p> <p>20 A I do.</p> <p>21 Q Okay. What is Linejunk?</p> <p>22 A It's just -- I believe it's just a Facebook</p> <p>23 page that's ran by an individual. I don't know.</p> <p>24 Q Right. Is it sort of a place that a lineman</p> <p>25 can go on Facebook for info and news and jobs and things</p>	<p style="text-align: right;">Page 20</p> <p>1 Linejunk, is there another Linejunk Facebook page that</p> <p>2 you would've been posting to?</p> <p>3 A Not that I know of. I mean, they had -- there</p> <p>4 are several pages that linemen use, but I don't know all</p> <p>5 of them for sure.</p> <p>6 Q Okay. So were you advertising on -- or were</p> <p>7 you recruiting on Linejunk or not -- or was it others,</p> <p>8 or not sure?</p> <p>9 MR. STAMEY: Objection, form. She's answered</p> <p>10 this question like four times, David.</p> <p>11 A I mean, it's possible, but I don't remember</p> <p>12 specifically.</p> <p>13 Q Okay. Do you remember any other pages besides</p> <p>14 the company webpage that you would've been recruiting</p> <p>15 on?</p> <p>16 A I do not recall.</p> <p>17 Q Okay. You can see that Linejunk has 494,000</p> <p>18 followers. Do you see that there?</p> <p>19 A Yes.</p> <p>20 Q Right. So this would be a great page to</p> <p>21 recruit on if you were trying to reach out to linemen,</p> <p>22 correct?</p> <p>23 MR. STAMEY: Objection to form.</p> <p>24 A I would assume. Yes.</p> <p>25 Q All right. So we're going to -- so after you</p>
<p style="text-align: right;">Page 19</p> <p>1 like that?</p> <p>2 A I assume so. They also sell stuff, you know,</p> <p>3 T-shirts and that sort of thing.</p> <p>4 Q Sure. Does your husband use Linejunk?</p> <p>5 A I have no idea. I know he's a -- at one point</p> <p>6 he was like a -- not a member or whatever, but you like</p> <p>7 the page so that you can see the posts or whatever.</p> <p>8 Q Right. It -- and just for -- how do I -- I</p> <p>9 want to show you just my screen here. We're not going</p> <p>10 to enter this as an exhibit. I just want to know if</p> <p>11 you can identify this as Linejunk's Facebook. Do you</p> <p>12 see my screen here, where it says, "Lineman appreciation</p> <p>13 on this and every day," and it says,</p> <p>14 "Linejunk@Linejunk"?</p> <p>15 A I can see that, yes.</p> <p>16 Q Yeah. Is that the Linejunk that we're talking</p> <p>17 about?</p> <p>18 A I can't say for sure. I assume so.</p> <p>19 Q Okay. Do you recall recruiting on this page?</p> <p>20 A I don't recall.</p> <p>21 Q Okay. Who would've handled the recruiting at</p> <p>22 Five Star?</p> <p>23 A Myself. As far as the posts themselves, it</p> <p>24 would've been me.</p> <p>25 Q Okay. All right. Is there -- other than this</p>	<p style="text-align: right;">Page 21</p> <p>1 kind of -- you were advertising for linemen to come work</p> <p>2 in Puerto Rico or recruiting. I imagine you would've</p> <p>3 had hundreds, if not thousands, of linemen contacting</p> <p>4 you, calling, texting, e-mailing, that sort of thing; is</p> <p>5 that correct?</p> <p>6 MR. STAMEY: Objection to form.</p> <p>7 A It does seem to have been several, yes.</p> <p>8 Q Right. I mean, I would think that it would've</p> <p>9 been overwhelming because I think you were the one</p> <p>10 primarily who had to respond to them. Do you recall</p> <p>11 that?</p> <p>12 MR. STAMEY: Objection to form.</p> <p>13 A I think I was probably the one that would've</p> <p>14 replied to Facebook posts or messages. I believe it</p> <p>15 listed my phone number and Jeremy Lovens' phone number.</p> <p>16 And we both -- we all fielded calls and e-mails.</p> <p>17 Q Okay. But safe to say, you would've -- you</p> <p>18 and the -- your team of folks dealing with the</p> <p>19 recruiting would've had to answer thousands of responses</p> <p>20 either on Facebook or texts, calls, or e-mails, correct?</p> <p>21 MR. STAMEY: Objection to form.</p> <p>22 A There were a lot. I don't know how many.</p> <p>23 Q Okay. And I just wanted to get a sense for is</p> <p>24 it thousands or hundreds? Do you have a sense?</p> <p>25 A No idea.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q Okay. And some of the guys that would contact</p> <p>2 you back wouldn't be just calling for themselves, they'd</p> <p>3 be calling or contacting you on behalf of the crews that</p> <p>4 they were with, correct?</p> <p>5 A Sometimes. Yes.</p> <p>6 Q All right. So sometimes even though you're</p> <p>7 talking to one person you're really talking to their</p> <p>8 entire crew, because they're going be passing that</p> <p>9 information off to their crews, correct?</p> <p>10 MR. STAMEY: Objection to form.</p> <p>11 A That was my understanding at the time.</p> <p>12 Q Right. Okay. We're going to take a look at</p> <p>13 some of the e-mails that you would've responded -- that</p> <p>14 you were sending out to these folks that you're</p> <p>15 recruiting on behalf of Five Star, right? I mean --</p> <p>16 well, before we do that, when you're doing this</p> <p>17 recruiting, who had you do the recruiting? Like who was</p> <p>18 the person that gave you that responsibility?</p> <p>19 A Scott Whitseil.</p> <p>20 Q Okay. So when you're recruiting, you're</p> <p>21 recruiting on behalf of Five Star, correct?</p> <p>22 A Yes, that's correct. Okay.</p> <p>23 Q Did you understand you would also be</p> <p>24 recruiting on behalf of Cobra?</p> <p>25 A I don't understand what you mean.</p>	<p style="text-align: right;">Page 24</p> <p>1 A Russell Brothers.</p> <p>2 Q Okay. Is he someone that ended up working for</p> <p>3 Five Star?</p> <p>4 A He did.</p> <p>5 Q Okay. And so, I have boxed in red kind of the</p> <p>6 things that I wanted to focus on in here, it looks like</p> <p>7 you were telling Mr. Brothers that all expenses will be</p> <p>8 paid. Do you see that?</p> <p>9 A I see that.</p> <p>10 Q Okay. And you told him "The pay scale I have</p> <p>11 now is a daily one," correct?</p> <p>12 A I did tell him that.</p> <p>13 Q And that the groundman is \$600 a day and hot</p> <p>14 apprentice is \$700 a day, correct?</p> <p>15 A That's correct.</p> <p>16 Q And with John Shepard, he's another person</p> <p>17 that responded, and your e-mail with him says</p> <p>18 "apprentice and groundman is \$600 a day, hot apprentice</p> <p>19 is \$700 day -- \$700 a day, and class B lineman is \$800 a</p> <p>20 day," correct?</p> <p>21 A Correct.</p> <p>22 Q And you told him that "pay is the same</p> <p>23 regardless of hours," correct?</p> <p>24 A That was stated in the e-mail, yes.</p> <p>25 Q And with Kyle, I don't see Kyle's last name in</p>
<p style="text-align: right;">Page 23</p> <p>1 Q Yeah. I mean, so you're recruiting on behalf</p> <p>2 of Five Star, but I wanted to know if you understood if</p> <p>3 part of your responsibilities was to actually be</p> <p>4 staffing for Cobra rather than just Five Star?</p> <p>5 MR. STAMEY: Objection to form.</p> <p>6 A That was not my understanding. I didn't even</p> <p>7 have access to Cobra companies in the payroll system --</p> <p>8 or the HR system.</p> <p>9 Q Okay. Okay. All right. That's fine. So</p> <p>10 let's go ahead and look at some of these e-mails if we</p> <p>11 can.</p> <p>12 A Wow. That's really small.</p> <p>13 Q I'll make it bigger for you.</p> <p>14 A Okay. Thank you.</p> <p>15 Q Yeah. Yeah. Is that readable?</p> <p>16 A Yes. Much better. Thank you.</p> <p>17 Q All right. I'm going to use some bookmarks on</p> <p>18 the side here to kind of help us navigate it. So I put</p> <p>19 together several of these to -- I just want to discuss</p> <p>20 with you the information that was relayed to these</p> <p>21 workers that you're recruiting on behalf of Five Star.</p> <p>22 Okay? So this is plaintiff's Exhibit 186, and we have</p> <p>23 here an e-mail chain between you and RBrothers89. Do</p> <p>24 you remember this person's real name?</p> <p>25 (EXHIBIT 186 MARKED FOR IDENTIFICATION)</p>	<p style="text-align: right;">Page 25</p> <p>1 here, but his e-mail is KyleTP02. Do you know who that</p> <p>2 is?</p> <p>3 A I do not.</p> <p>4 Q Okay. But he was a person that was responding</p> <p>5 in -- to an ad, and you told him this pay scale right</p> <p>6 here. "The foreman is \$1,250 per day, journeyman,</p> <p>7 lineman, \$1,000 per day, A class, \$900, B class, \$800,</p> <p>8 hot apprentice, \$700, and apprentice groundman is \$600,"</p> <p>9 correct?</p> <p>10 A Yes. That's what was given to us initially.</p> <p>11 Q Right. And Kyle -- it looks like Kyle was</p> <p>12 also submitting an application for another person, a</p> <p>13 person named Wesley Amato, correct?</p> <p>14 A Possibly.</p> <p>15 Q Okay. And that's something that would happen.</p> <p>16 Like sometimes the person you're talking to is actually</p> <p>17 kind of helping to get other folks on, as well, correct?</p> <p>18 A Yes, that's right.</p> <p>19 Q Did Tristian Stewart end up working for Five</p> <p>20 Star?</p> <p>21 A You know, I don't know. I don't recall that</p> <p>22 name. There were a lot of folks at that time, so I'm</p> <p>23 not sure.</p> <p>24 Q Okay. But here's another -- you got another</p> <p>25 e-mail where you told him what the pay would be at</p>

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<p style="text-align: right;">Page 26</p> <p>1 foreman, \$1,250 per day, journeyman, \$1,000 per day, 2 A class, \$900, B class, \$800, hot apprentice, \$700, 3 apprentice, \$600, correct? 4 A Correct. 5 Q And that's -- that was your response after he 6 asked you if the pay scale had been finalized. You see 7 that? 8 A I do. 9 Q Okay. And with Mr. Stewart, you also told him 10 like you've said to others, that "All expenses will be 11 paid," correct? 12 A Yes. That was my understanding. Their room, 13 board, food would be paid. 14 Q And you also know that from Mr. Stewart that 15 he was responding to a Facebook post, correct? 16 A Yes, I believe so. 17 Q And here are some e-mails with Mr. Shaun 18 Merrell. Do you remember him? 19 A I do not. 20 Q Okay. You don't know if he ended up working 21 for Five Star? 22 A I do not know. 23 Q Okay. This is sort of a longer chain. Let's 24 start at the bottom. So why don't you go ahead -- if 25 you don't mind, can you start from the bottom here and</p>	<p style="text-align: right;">Page 28</p> <p>1 Varnell. Okay. We can kind of scroll up through this 2 one. 3 A I think I did some copying and pasting on 4 these e-mails after a while. 5 Q Sure. Makes sense. So in this one, 6 Mr. Varnell, you're telling him to "see the pay scale 7 below." And if we kind of go down to the bottom, it 8 says "Your daily pay is the same no matter what the 9 hours are and all expenses, meals, and lodging are 10 covered." So that's what you told him, right? 11 A That is what we said. Yes. 12 Q Okay. And then you told him the same day-rate 13 pay scale, correct? 14 A Correct. 15 Q Then Roy is talking about, "Jeremy mentioned 16 the pay scale and if I bring my own men in equipment," 17 do you know what he's talking about? 18 A I would assume he had talked to Jeremy Lovans 19 and -- 20 Q Who's that? I'm sorry. 21 A He -- at the time, I believe he was the VP of 22 Operations for Five Star Electric. 23 Q Okay. Roy Varnell sounds like one of these 24 folks who may be coming with people, it's not just him. 25 MS. STAMEY: Objection, form.</p>
<p style="text-align: right;">Page 27</p> <p>1 kind of get yourself familiar with this e-mail chain? 2 A Sure. 3 Q And just tell me when you want to scroll up. 4 A Okay. Yeah. Would you scroll up for me? 5 Thank you. Okay. Okay. Okay. 6 Q All right. So again, with Mr. Merrill, you 7 informed him that all expenses will be paid, correct? 8 A That's correct. 9 Q And you informed him of the same day-rate pay 10 scale that we've been going through, correct? 11 A That's right. 12 Q And you told him his daily pay is the same no 13 matter what the hours are, correct? 14 A Correct. That whether they worked 16, 12, 10 15 -- 16 Q And all expenses, meals, and lodging are 17 covered, correct? 18 A Correct. 19 Q And he asked you "Is the day-rate paid seven 20 days or just days worked"? And your answer was "Storm 21 is seven days a week for 12-hour days." And that's what 22 you told him, right? 23 A That's what I said in -- that's what the 24 information we'd been given initially is. 25 Q All right. Let's go to the e-mails with Roy</p>	<p style="text-align: right;">Page 29</p> <p>1 A I don't remember Roy. 2 Q Fair enough. All right, here we have an 3 e-mail with Mr. David Rendon. Do you remember him? 4 A I do. 5 Q Okay. Did he end up working for Five Star? 6 A He did. 7 Q Okay. Here as well you told him the day-rate 8 pay scale and that his daily pay saying "No matter what 9 the hours are, all expenses, meal, lodging are covered," 10 correct? 11 A That's correct. 12 Q Here we have some e-mails with Josh Morgan. 13 Do you remember him? 14 A Yeah, I believe so. I do. 15 Q Do you think he worked for Five Star? 16 A I think so. 17 Q Okay. This is a little longer chain. 18 I'm going to scroll down the bottom -- 19 A Okay. 20 Q -- and we'll do the scroll up trick until you 21 tell me when you're ready. I think it starts right 22 here, October 23, on class B lineman. Go ahead and 23 start reviewing there. 24 A Okay. 25 Q We'll just scroll up as you need.</p>

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<p style="text-align: right;">Page 30</p> <p>1 A Okay. You can scroll up. Okay. Dave Pruitt.</p> <p>2 Okay. Okay. Okay. Okay. All right.</p> <p>3 Q All right. Let's kind of go through this.</p> <p>4 The first part of this is just what we've seen earlier.</p> <p>5 You told them "The daily pay is the same no matter what</p> <p>6 the hours are, all expenses, meal, lodging are covered,"</p> <p>7 correct?</p> <p>8 A That's correct.</p> <p>9 Q You also gave him the same day-rate pay scale,</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q Mr. Morgan was coming with this group of folks</p> <p>13 here listed with their names and numbers, correct?</p> <p>14 MS. STAMEY: Objection, form.</p> <p>15 A I assume.</p> <p>16 Q Okay. You actually spoke to one of these</p> <p>17 guys, Dave Prewitt, correct?</p> <p>18 A Yes.</p> <p>19 Q He starts asking to see if -- it looks like he</p> <p>20 wants to have confirmation that he is going to be able</p> <p>21 to work for you guys in Puerto Rico, correct?</p> <p>22 MS. STAMEY: Objection, form.</p> <p>23 A I've told him that I was working to get</p> <p>24 everyone processed and --</p> <p>25 Q Well, down here -- look, before we get there,</p>	<p style="text-align: right;">Page 32</p> <p>1 lodging are covered," right?</p> <p>2 A Okay.</p> <p>3 Q Yeah. I mean, this is what --</p> <p>4 MS. STAMEY: Dave, is there a Bates label on</p> <p>5 this document?</p> <p>6 Q Yes 645. This is the information that you</p> <p>7 were copying and pasting and sending to people?</p> <p>8 A I believe so.</p> <p>9 Q Right. Also, the same day-rate pay scale,</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 MS. STAMEY: Hey, Dave, I'm just going to give</p> <p>13 you a heads up that I need you to e-mail me a copy</p> <p>14 of that exhibit so that I can use it in redirect.</p> <p>15 MR. MOULTON: Yeah, okay. No problem. I want</p> <p>16 to take a quick break because there's something --</p> <p>17 there's a document I need to pull up that I didn't</p> <p>18 think I would need, but we're going to look at it,</p> <p>19 okay? Go ahead and take five and we'll be right</p> <p>20 back.</p> <p>21 VIDEOGRAPHER: Going off the record at 10:07</p> <p>22 a.m.</p> <p>23 (OFF THE RECORD)</p> <p>24 VIDEOGRAPHER: Back on the record at 10:17 a.m.</p> <p>25 BY MR. MOULTON:</p>
<p style="text-align: right;">Page 31</p> <p>1 my question is about this e-mail right here. He was</p> <p>2 asking you to confirm if they got the job and the next</p> <p>3 steps, right?</p> <p>4 A That's what he's asking, yes.</p> <p>5 Q Right. You say, "Yes, you are in," that means</p> <p>6 that "you've got the job," right?</p> <p>7 MS. STAMEY: Objection, form</p> <p>8 A Con -- later in the e-mail I made sure he</p> <p>9 understood it was contingent upon his drug screen and</p> <p>10 background check as well.</p> <p>11 Q Of course. Right. Obviously. Right. But</p> <p>12 what -- then you also knew that he was giving his notice</p> <p>13 at his current employer, right?</p> <p>14 A That's correct.</p> <p>15 Q You knew he was relying on your representation</p> <p>16 about what the work would be like and the pay and that</p> <p>17 he was hired --</p> <p>18 MS. STAMEY: Objection --</p> <p>19 Q -- subject to the background check, correct?</p> <p>20 MS. STAMEY: Objection, form.</p> <p>21 A That's correct.</p> <p>22 Q The last one, it's not addressed to anyone in</p> <p>23 particular. I don't see who it is to, but it's the same</p> <p>24 information, right? "Your daily pay is the same no</p> <p>25 matter what the hours are, all expenses, meal and</p>	<p style="text-align: right;">Page 33</p> <p>1 Q All right. Ms. Davis, you understand you're</p> <p>2 still under oath, correct?</p> <p>3 A Yes, I do.</p> <p>4 Q All right. I want to just finish up with this</p> <p>5 Exhibit 186 that we were talking about with these</p> <p>6 recruiting e-mails, and I just want to direct you to the</p> <p>7 last one I have here. I'm going to show you on the</p> <p>8 screen. This last one is with someone named Tevin</p> <p>9 Slaughter. Do you remember him?</p> <p>10 A I do not.</p> <p>11 Q Okay. On October 20, he wrote you that he had</p> <p>12 seen the ad on Linejunk and was interested in going to</p> <p>13 Puerto Rico for storm work. Do you see him asking you</p> <p>14 that?</p> <p>15 A I do see that.</p> <p>16 Q Okay. Does that refresh your memory that you</p> <p>17 were advertising or recruiting Linejunk?</p> <p>18 MS. STAMEY: Objection, form.</p> <p>19 A No, it does not. I'm not saying I did or</p> <p>20 didn't. I do not remember doing it.</p> <p>21 Q Okay. Do you know why Tevin would be reaching</p> <p>22 out to you about an ad on LineJunk if you-all hadn't</p> <p>23 recruited on Linejunk?</p> <p>24 MS. STAMEY: Objection, form.</p> <p>25 A I don't know why, no.</p>

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<p>1 Q I'm sorry?</p> <p>2 A I don't -- I mean, I don't know what his</p> <p>3 reasoning would be or what he saw. I have no way of</p> <p>4 knowing that.</p> <p>5 Q Okay. You do know for sure that you were</p> <p>6 recruiting on Facebook, but other than the company</p> <p>7 website, you don't recall this page on Facebook that you</p> <p>8 were recruiting on?</p> <p>9 A That's correct. I do not recall.</p> <p>10 Q Do you have a sense for how many pages you</p> <p>11 were recruiting on?</p> <p>12 A I do not.</p> <p>13 Q Okay. Is it more than 10, more than five?</p> <p>14 Can you give me any sort of general estimate?</p> <p>15 A I have no idea. It was five years ago.</p> <p>16 Q Okay. When you -- this wasn't the only</p> <p>17 project you would've recruited workers for, right?</p> <p>18 A During that time period or ever?</p> <p>19 Q When you worked for Five Star.</p> <p>20 A At any point when I worked for Five Star, are</p> <p>21 you asking?</p> <p>22 Q Right.</p> <p>23 A Okay.</p> <p>24 Q Yeah. Well, I mean, you don't remember that</p> <p>25 one five years ago, but what I'm asking is that there's</p>	<p>1 some of these e-mails and these communications we've</p> <p>2 been talking about, one of the first things that they</p> <p>3 would do would be to go to an orientation, correct?</p> <p>4 A Yes. Once -- I'm sorry, can you say that for</p> <p>5 me one more time?</p> <p>6 Q Yeah. After you've talked with these guys,</p> <p>7 after you've recruited them essentially through these</p> <p>8 e-mails and texts, phone calls, all this, one of the</p> <p>9 first things that they would do when they are coming on</p> <p>10 with Five Star is to go to an orientation, right?</p> <p>11 A That's right.</p> <p>12 Q Okay. Where did you-all conduct orientations?</p> <p>13 A It varied during this process. The very first</p> <p>14 orientation we had was at the Ballard Center here in</p> <p>15 Madisonville, Kentucky. We also used the Ramada Inn in</p> <p>16 Henderson at times. We used the Ballard Center more</p> <p>17 than once, the Ramada Inn more than once. Beyond that,</p> <p>18 I'm not -- I can't remember for sure at that point.</p> <p>19 Q Okay. Did you perform the orientations or was</p> <p>20 that somebody else?</p> <p>21 A Well, it was a joint effort. I would do the</p> <p>22 HR portion of the orientations. Of course, the Safety</p> <p>23 Director manager, he did the safety portion. Or one of</p> <p>24 the safety specialists would do the safety portion of</p> <p>25 the orientation. There would always be usually one</p>
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<p>1 probably other recruiting events that you may have done</p> <p>2 more recently for Five Star that you may remember.</p> <p>3 A Okay. Yeah, we've set up booths at recruiting</p> <p>4 job fairs and various things like that. We may have</p> <p>5 even posted on Indeed recently, I don't know, before I</p> <p>6 left.</p> <p>7 Q Okay. When it's a storm situation like this</p> <p>8 and you need to get people quickly, what were the normal</p> <p>9 channels for recruiting folks?</p> <p>10 A We actually -- I don't remember ever</p> <p>11 recruiting specifically for a storm other than Puerto</p> <p>12 Rico.</p> <p>13 Q Okay. It's -- for your work at Five Star,</p> <p>14 that was sort of the unique thing?</p> <p>15 A For -- recruiting for just a particular event,</p> <p>16 that was unique, yes.</p> <p>17 Q Okay. For the work in Puerto Rico, did you</p> <p>18 post on Indeed?</p> <p>19 A I don't even think Indeed was around then.</p> <p>20 Q Okay.</p> <p>21 A I don't remember doing so.</p> <p>22 Q Okay. Did you-all do any booths or fairs for</p> <p>23 Puerto Rico work?</p> <p>24 A No, I didn't have time.</p> <p>25 Q Okay. After workers were recruited through to</p>	<p>1 member at least of management present. But we were all</p> <p>2 -- but I would do most of the HR portion.</p> <p>3 Q Okay. Who was the safety person that would be</p> <p>4 there?</p> <p>5 A Usually it was Brian Baldwin or Daniel</p> <p>6 Baldwin. I can remember Andrew Henry and John Hayes</p> <p>7 being there. I don't remember which orientations were</p> <p>8 -- you know, which guys were where.</p> <p>9 Q Okay. Right. It would probably vary, but</p> <p>10 there's sort of the general --</p> <p>11 A Right.</p> <p>12 Q That's generally who was present?</p> <p>13 A Yes.</p> <p>14 Q Would anybody -- as far as you can recall, was</p> <p>15 anybody from Cobra or Mammoth ever in attendance at</p> <p>16 these orientations?</p> <p>17 A Steve Wolfe might have been at that first one,</p> <p>18 but I don't remember if he was --</p> <p>19 Q Who was he?</p> <p>20 A He was -- I really don't know what his job</p> <p>21 title was. Business development or something for Cobra</p> <p>22 Energy, I think. But I'm not -- I can't be sure. He</p> <p>23 was not a Five Star employee.</p> <p>24 Q Okay. We're going to look at an exhibit</p> <p>25 that's been previously marked as Exhibit 138. Bear</p>

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<p style="text-align: right;">Page 38</p> <p>1 with me, I've got to get on the right screen.</p> <p>2 A Okay.</p> <p>3 Q Okay. This is Exhibit 138. Do you recognize</p> <p>4 this as an orientation handout for Five Star?</p> <p>5 (EXHIBIT 138 MARKED FOR IDENTIFICATION)</p> <p>6 A Can you make that a little larger?</p> <p>7 Q Absolutely.</p> <p>8 A Yes. That looks like a letter that I would</p> <p>9 send to applicants or recruits giving them the</p> <p>10 information of orientation, where to be, when, what to</p> <p>11 bring with them, how to pack, what documents will be</p> <p>12 needed, yes.</p> <p>13 Q This is a document that would be sent to them</p> <p>14 in advance of orientation or the document that they</p> <p>15 would receive at orientation?</p> <p>16 A No, it was something that would be sent to</p> <p>17 them prior to orientation, letting them know when</p> <p>18 orientation is, where it is, what airport to use, that</p> <p>19 sort of thing.</p> <p>20 Q Okay. I see this one is set for Thursday</p> <p>21 April 5, 2018. Would you guys typically include the</p> <p>22 date of the orientation that they're going to be</p> <p>23 attending?</p> <p>24 A That was usually the intention of the letter</p> <p>25 was to let them know the date and time and that sort of</p>	<p style="text-align: right;">Page 40</p> <p>1 Q Okay. Either way, they're committing to go to</p> <p>2 a Five Star based on information they've received and</p> <p>3 the recruiting e-mails and also this letter, right?</p> <p>4 MS. STAMEY: Objection, form.</p> <p>5 A I would assume.</p> <p>6 Q All right. We're going to look at exhibit -</p> <p>7 MS. STAMEY: Dave, I don't think you mean to do</p> <p>8 this, but your outline is on the screen.</p> <p>9 MR. MOULTON: Sorry. Yeah, that's</p> <p>10 embarrassing. Did you already screenshot it?</p> <p>11 MS. STAMEY: I did not screenshot.</p> <p>12 MR. MOULTON: Okay. Thank you. I hope Anthony</p> <p>13 didn't either. I wouldn't do it to you, Harris.</p> <p>14 MS. STAMEY: I don't know about that. You've</p> <p>15 sent screenshots of me to Rick several times.</p> <p>16 MR. MOULTON: Well, that's just you, not your</p> <p>17 notes. That's different. But, you know, we like</p> <p>18 your outfits. You get creative sometimes.</p> <p>19 MS. STAMEY: I thought about wearing a vest for</p> <p>20 you today, but.</p> <p>21 THE WITNESS: Do I need to leave the room so</p> <p>22 you-all can work this out? Sorry.</p> <p>23 MR. MOULTON: That's funny.</p> <p>24 MS. STAMEY: You're absolutely right, Missy.</p> <p>25 MR. MOULTON: All right, let's try this again.</p>
<p style="text-align: right;">Page 39</p> <p>1 thing, yes.</p> <p>2 Q Okay. We also -- again, we see the same pay</p> <p>3 scale that we've been looking at in the recruiting</p> <p>4 e-mails, correct?</p> <p>5 A That's correct, and it states that "You'll</p> <p>6 have an offer letter in your new hire packet that you</p> <p>7 receive at orientation. The pay scale is below. The</p> <p>8 tax situation and benefits will be explained during</p> <p>9 orientation and please bring the following with you to</p> <p>10 orientation," letting them know what documents we would</p> <p>11 need to process them.</p> <p>12 Q Okay. A new recruit at this point, by the</p> <p>13 time he's getting this letter and he's about to</p> <p>14 potentially fly to Kentucky and then go to Puerto Rico,</p> <p>15 is pretty well committed to this job at this point.</p> <p>16 MS. STAMEY: Objection, form.</p> <p>17 A I would assume that they would be.</p> <p>18 Q All right. If they were already working,</p> <p>19 they probably would've already given notice or left that</p> <p>20 job, like we saw in one of the recruiting e-mails,</p> <p>21 correct?</p> <p>22 MS. STAMEY: Objection, form.</p> <p>23 A Some of them just went on leave, to be honest,</p> <p>24 on their current jobs and then with intent of going back</p> <p>25 to their job, but yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 Okay. That's just a webpage, right?</p> <p>2 MS. STAMEY: Yes.</p> <p>3 BY MR. MOULTON:</p> <p>4 Q Okay. You can see Exhibit 187 now, Ms.</p> <p>5 Davis?</p> <p>6 (EXHIBIT 187 MARKED FOR IDENTIFICATION)</p> <p>7 A I can.</p> <p>8 Q Okay. Is this an example form offer letter</p> <p>9 that Five Star used?</p> <p>10 A I believe so. There were several versions of</p> <p>11 this that floated around. I'm not sure which one this</p> <p>12 is. But I'm thinking this may have been -- but I can't</p> <p>13 say for certain, the final draft, I guess, is what I'm</p> <p>14 getting at. I don't know exactly which one this one is,</p> <p>15 but --</p> <p>16 Q Okay. But it's safe to say that you saw</p> <p>17 several versions?</p> <p>18 A Yes.</p> <p>19 Q Okay. This is definitely one of the ones that</p> <p>20 you-all were using, correct?</p> <p>21 A I believe so. But, again, I don't know which</p> <p>22 version was the final version. Like I said, it's been a</p> <p>23 while.</p> <p>24 Q Okay. Now, do you know -- well, who was it</p> <p>25 that was the person that would've been responsible for</p>

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<p style="text-align: right;">Page 42</p> <p>1 getting offer letters out and getting them signed and 2 collected and all that?</p> <p>3 A That would've been me.</p> <p>4 Q Okay. Do you know if everyone got an offer 5 letter and if it was signed and collected?</p> <p>6 A To my knowledge, new employees were provided 7 offer letters. If they -- if we did not collect one, it 8 was an error. But, I mean, I can't say for sure. But 9 it was our intent for every new hire to receive one.</p> <p>10 Q I'm going to show you Exhibit 151. What do 11 you understand this document to be?</p> <p>12 (EXHIBIT 151 MARKED FOR IDENTIFICATION)</p> <p>13 A Once we heard from our corporate HR team that 14 they had met with the lawyers and the plan was to pay 15 the storm on an hourly rate plus overtime. Someone, I 16 guess, developed this form that kind of broke it down 17 for us, and also to help differentiate the fact that if 18 someone worked for us state-side, came back to the 19 States and worked for us at home, they would have a 20 different hourly rate as well.</p> <p>21 Q Okay. On Exhibit 151, that last rate you're 22 talking about, the state-side rate if they left Puerto 23 Rico, that's a non-Puerto Rico wage column, correct?</p> <p>24 A That's right.</p> <p>25 Q Okay. In the first column, we have the</p>	<p style="text-align: right;">Page 44</p> <p>1 work the full seven days a week, 16-hour days, seven 2 days a week, that the per hour calculations for overtime 3 and straight time wouldn't necessarily meet the per day 4 rate that we had given to the employees. We would have 5 to make -- I don't know if you'd call it gross up or 6 adjustments -- or some kind of adjustment to the 7 employee's paychecks to help bring them up to their 8 day-rate amounts that we had advertised.</p> <p>9 Q Okay. Just to kind of give a simple example 10 on this Exhibit 151 -- I mean, I just love math, so I 11 can't help myself. But let's take that \$1,000 day rate 12 that's associated with the 47.30 hourly rate. Do you 13 see that?</p> <p>14 A Uh-huh.</p> <p>15 Q To kind of give an example of what I think 16 you're talking about, if you had a guy, for example, who 17 worked one day that he would get paid hourly at 16 hours 18 would be 47.3 times 16, right?</p> <p>19 A If that was his only day worked that week, 20 correct.</p> <p>21 Q Right. I'll represent to you because I just 22 did the math on my calculator, that figure is \$756.80 23 cents, correct?</p> <p>24 MS. STAMEY: Objection, form.</p> <p>25 A I have to take your word for it. I don't have</p>
<p style="text-align: right;">Page 43</p> <p>1 different positions that we've been seeing in the 2 recruiting e-mails, and also in the orientation letter, 3 correct?</p> <p>4 A I believe so.</p> <p>5 Q Right. Then we also see -- under the 6 "PR Storm Per Day," we see the same rates that were 7 discussed in -- in the recruitment e-mails, and also the 8 orientation letter, correct?</p> <p>9 A I believe so.</p> <p>10 Q All right. The new one here is the "PR Storm 11 Per Hour," right?</p> <p>12 A That's right.</p> <p>13 Q That's something that we haven't seen on the 14 previous documents yet, correct?</p> <p>15 A That's correct.</p> <p>16 MS. STAMEY: Objection form.</p> <p>17 Q Now, Ms. Davis, do you know who came up with 18 the PR storm per hour rates?</p> <p>19 A Specifically, no.</p> <p>20 Q Okay. Did you ever consider what happens when 21 someone, say, doesn't work a full week?</p> <p>22 A We did.</p> <p>23 Q Okay. Can you explain to me what the issue 24 was?</p> <p>25 A We realized early on that if someone did not</p>	<p style="text-align: right;">Page 45</p> <p>1 a calculator.</p> <p>2 Q Okay. What you're saying is that for folks 3 like that that have been told that he could expect 4 \$1,000 a day, he would get a gross up of the difference 5 between \$1,000 and what 47.3 times 16 is?</p> <p>6 MS. STAMEY: Objection, form.</p> <p>7 A Yes, I believe that's correct.</p> <p>8 Q Okay. What did you think about this pay plan?</p> <p>9 MS. STAMEY: Objection, form.</p> <p>10 A Specifically -- can you narrow it down?</p> <p>11 Q Yeah. Did you an opinion? Do you recall ever 12 having an opinion about it either way, if you liked it 13 didn't like it?</p> <p>14 A Well, I was relieved to see that we were doing 15 hourly rates plus overtime.</p> <p>16 Q Okay. You were worried about the day-rate 17 situation?</p> <p>18 A I was.</p> <p>19 Q Why?</p> <p>20 A Because legally that was not something that I 21 thought we should be doing as a payroll HR professional.</p> <p>22 Q Okay. Why not?</p> <p>23 A It was against, I can never say it right, 24 FLSA or FSLA laws. The --</p> <p>25 Q What was your understanding -- in your</p>

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<p style="text-align: right;">Page 46</p> <p>1 understanding, what would be the violation with a 2 day-rate?</p> <p>3 A I don't know. I just know that -- I don't 4 know specifically. But --</p> <p>5 Q Well, was it your understanding that if you 6 pay workers a day-rate, that an additional amount for 7 overtime would have to be paid?</p> <p>8 A I do not know. I don't understand.</p> <p>9 Q That's fine. Okay. You don't understand the 10 question, or you don't understand what the problem would 11 be?</p> <p>12 A Kind of both.</p> <p>13 Q Okay. My understanding is that -- I'm not 14 trying to put words in your mouth, I'm just trying to 15 understand. Forgive me if I'm not saying it right. You 16 can correct me. I understand that you were 17 uncomfortable with a pure day-rate situation because 18 there's something about it that you didn't think was 19 right; is that right?</p> <p>20 MS. STAMEY: Objection, form.</p> <p>21 A I did have reservations about paying only a 22 day-rate and not an hourly rate. I was relieved when I 23 heard that we would be moving to an hourly rate in order 24 to get to the day-rate.</p> <p>25 Q Okay. My question is about the concerns that</p>	<p style="text-align: right;">Page 48</p> <p>1 A You can -- okay.</p> <p>2 Q Okay. Can you describe to us what was going 3 on with this e-mail chain, starting at the bottom?</p> <p>4 A Well, based on the date there, I would assume 5 I was getting a lot of questions from the employees 6 about how their pay rates were being calculated and how 7 the math would work. And I had seen various documents. 8 I was just asking corporate HR for some clarification on 9 the mathematical explanation for how they had come up 10 with the hourly and overtime rates.</p> <p>11 Q Okay. So the person at corporate HR you were 12 talking with would have been Jeff Beagle, correct?</p> <p>13 A Jeff Beagle and Alex Kalman, yes.</p> <p>14 Q And it looks like Jeff Beagle sent you an 15 excel file that kind of walked through how they came up 16 with the rates we were just looking at, correct?</p> <p>17 A Correct.</p> <p>18 Q And he's explaining that if the person works a 19 full week, like you'd said earlier, they will get the 20 equivalent of their day-rate times seven?</p> <p>21 A Correct.</p> <p>22 Q So can you explain to us what you meant when 23 you wrote "Samantha saying this is stupid," so stupid"?</p> <p>24 A Because I knew that it was going to be a lot 25 of manual work on our part to make this all happen in</p>
<p style="text-align: right;">Page 47</p> <p>1 you had in a day-rate. You mentioned that you thought 2 it might not have been in compliance with the Fair Labor 3 Standards Act, correct?</p> <p>4 A Correct.</p> <p>5 Q I was asking you if you understood in what way 6 would it not be in compliance with the Fair Labor 7 Standards Act, in your opinion.</p> <p>8 MS. STAMEY: Objection, form. Asked and 9 answered.</p> <p>10 A I can't quote for you verbatim FLSA laws, I 11 just don't know. But I do know that overtime rates must 12 be paid. To tell you exactly what the problem is with 13 it, I don't know that I can do that because one, I'm not 14 a lawyer. And two, I'm not that familiar with the 15 verbiage on the actual law.</p> <p>16 Q That's fine. That's fair. Okay. I'm going 17 to show a document that's been previously marked as 18 Exhibit 166. This is an e-mail chain. I'm going to 19 scroll down to the bottom, give you a chance to get 20 familiar with this document. Can you -- do you need me 21 to zoom? Can you see it?</p> <p>22 A No, I can see it.</p> <p>23 Q Okay. Go ahead and just review that and tell 24 me when you want to scroll up.</p> <p>25 (EXHIBIT 166 MARKED FOR IDENTIFICATION)</p>	<p style="text-align: right;">Page 49</p> <p>1 Paycom.</p> <p>2 Q Right. Okay. And I've seen thousands of 3 e-mails and many of them with you on it, and I can 4 appreciate the pain, I think, because -- let me see if I 5 can kind of describe it. It sounds like to me that to 6 do this payroll you're having to enter rates and hours, 7 and also having to do the gross ups. So it's sort of a 8 burdensome process, right?</p> <p>9 MR. STAMEY: Objection to form.</p> <p>10 A It was a burdensome process.</p> <p>11 Q And is that what you're talking about when you 12 say, "this is stupid"?</p> <p>13 A It was.</p> <p>14 Q Was it also stupid because it wasn't exactly 15 what the guys had been promised?</p> <p>16 MR. STAMEY: Objection to form.</p> <p>17 A It was exactly what they'd been promised, we 18 just had to explain the calculations.</p> <p>19 Q Oh, okay.</p> <p>20 A And that caused extra time and extra work, 21 I guess you could say.</p> <p>22 Q Right. And I know from our end of things and 23 also from reading the e-mails, you were having to deal 24 with a lot of folks who are saying, "Hey, I didn't get 25 my day-rate. I need to get the gross up on the next</p>

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<p style="text-align: right;">Page 50</p> <p>1 check." That extra level of administrative work was 2 part of the reason why this was stupid? 3 MR. STAMEY: Objection to form. Dave, if 4 you're going to make statements about what documents 5 say like that, you need to bring them up on the 6 screen. 7 A I'm sorry, can you ask your question again? 8 Q Yeah. I'm trying to find out -- it sounds 9 like to me that part of the reason why this is stupid 10 and kind of what you're hinting at, is that you have to 11 deal with all the folks that would call in and say, 12 "Hey, I didn't get my day-rate. I need my gross up." 13 So you'd have to reprocess checks or make sure it got on 14 the next one, things like that, correct? 15 MR. STAMEY: Objection to form. 16 A I don't believe that at November 13 that that 17 had happened at that time yet. 18 Q Okay. But that is something that did happen, 19 right? 20 MR. STAMEY: Objection to form. 21 Q Later on? 22 MR. STAMEY: Objection to form. 23 A I'm not sure that people would actually call 24 and say, "I need a gross up," they don't know what that 25 is. So I would have a lot of questions about "Can you</p>	<p style="text-align: right;">Page 52</p> <p>1 complaints by folks asking about them not getting paid 2 their day rate, or the amount that would be their full 3 day-rate for their paychecks? 4 MR. STAMEY: Objection to form. 5 A I'm not trying to be evasive here, but I 6 really don't remember exact phone calls. So I'm sure I 7 probably did talk to some people about concerns of not 8 getting their day-rates exactly. But I can't tell you 9 who. I can't tell you when. I can't tell you 10 specifics. 11 Q Now we're going to look at Exhibit 188. And 12 I want to start at the bottom again here. Why don't you 13 go ahead and get yourself familiar with these e-mails 14 and when you're ready let me know and I'll scroll up for 15 you. 16 (EXHIBIT 188 MARKED FOR IDENTIFICATION) 17 A Okay. You can because that was part of the 18 previous e-mail. Okay. Okay. Okay. 19 Q All right. Can you explain what's going on 20 with this e-mail chain? 21 A So once Jeff sent me the spreadsheet, it 22 appears that I went back to him with a question of what 23 are we going to do when someone misses a day during the 24 week? How are we going to make those adjustments? And 25 he replied back about running a report of wages earned</p>
<p style="text-align: right;">Page 51</p> <p>1 explain my paycheck. I don't understand." 2 Q Okay. I mean, I realize they may not have 3 used the words "gross up," but did you all get 4 complaints from workers saying, "Hey, I didn't get what 5 I'm supposed to get on this paycheck"? Like "I was 6 supposed to get more because when I worked less than a 7 full week, I'm not getting my day-rate." Do you 8 remember complaints or calls like that? 9 A There were constant calls of various reasons 10 for payroll. They didn't understand taxes, they didn't 11 understand hours. "Can you tell me," you know, "how 12 many" -- I mean, they would've said different things. 13 But there was a lot of explanation that went into a lot 14 of different things on the pay stubs because they didn't 15 understand. 16 Q Okay. 17 A Whether it was because there was a day missing 18 or because they just -- it was a crazy situation and 19 maybe hours got missed being put in and we just had to 20 give them more hours. It just depends on what the 21 situation was. 22 Q All right. And I could appreciate you 23 probably had to answer questions just about probably 24 everything having to do with payroll, but my question is 25 specifically about, were you aware of calls or</p>	<p style="text-align: right;">Page 53</p> <p>1 versus days worked. If there was a negative balance or 2 it does not equal, it'll be grossed up on their next 3 payout once their hitch is done. 4 Q Okay. 5 A And then I forwarded it to Samantha. 6 Q All right. What were your thoughts about this 7 approach? 8 A For one, I didn't know what report he was 9 referring to in Paycom. I didn't how he -- he didn't 10 give me any specifics on what report to run or how we 11 would actually make that happen in Paycom. And I was 12 pretty certain it wasn't like an automatic process that 13 Paycom could just magically do and that I would end up 14 having to make a lot of manual entries and a lot of 15 extra work to make it all happen and hoped that no one 16 got missed. There were a lot of aspects of the question 17 that I don't believe he really realized or addressed in 18 my question. 19 Q Okay. So typical boss coming up with a plan 20 and really no clue about all the work that's going to 21 have to go into it? 22 MR. STAMEY: Objection to form. 23 A Well, I can't say what he did have a clue or 24 didn't have a clue about, but I know it didn't appear 25 that he had a specific explanation.</p>

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<p style="text-align: right;">Page 54</p> <p>1 Q Okay. Well, what is clear, it does look like</p> <p>2 that Mr. Beagle is going to be asking for this report to</p> <p>3 show these differences so their pay can be grossed up</p> <p>4 when they don't work a full week, correct?</p> <p>5 MR. STAMEY: Objection to form.</p> <p>6 A I don't know what you mean by "asking for."</p> <p>7 Q Yeah. What I mean is, I don't view this as</p> <p>8 looking at it like your idea that you're going to be</p> <p>9 doing the gross ups. It looks like to me that Jeff</p> <p>10 Beagle is asking for that information so that can be</p> <p>11 done, correct?</p> <p>12 MR. STAMEY: Objection to form. It is not what</p> <p>13 the e-mail states, Dave.</p> <p>14 A I don't know. He's just talking about running</p> <p>15 a report out of Paycom to get the information needed.</p> <p>16 Q Right. But he's telling you how it's going to</p> <p>17 be handled, right? In November 14, "If there is a</p> <p>18 negative balance that does not equal up to the day rate,</p> <p>19 it will be grossed up on their next payroll once their</p> <p>20 hitch is done," right?</p> <p>21 A That's what he stated.</p> <p>22 Q Right. And so, this is coming from Jeff</p> <p>23 Beagle, this practice or policy if you will. It's not</p> <p>24 coming from you.</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 56</p> <p>1 A Yes.</p> <p>2 Q I didn't hear you.</p> <p>3 A Yes. I'm sorry.</p> <p>4 Q Okay. Look at Exhibit 179, it's been</p> <p>5 previously marked. So we have another e-mail chain.</p> <p>6 Same process, why don't you just review this and let me</p> <p>7 know when you're ready to scroll up.</p> <p>8 (EXHIBIT 179 MARKED FOR IDENTIFICATION)</p> <p>9 A Okay.</p> <p>10 MR. STAMEY: What number is this, Dave?</p> <p>11 MR. MOULTON: It's 179. We've used it before,</p> <p>12 that's why we're going back in numbering.</p> <p>13 A Okay. Okay. Oh, hang on. Okay. Okay. Okay.</p> <p>14 Q Okay. So is this where Mr. Beagle has</p> <p>15 provided you now more information about how this is</p> <p>16 going to work as far as collecting the information you</p> <p>17 need to deal with any gross up issues?</p> <p>18 A I believe so.</p> <p>19 Q And if we could kind of focus on his e-mail to</p> <p>20 you on November 17, not just to you, but you're on the</p> <p>21 "To" line at 8:50 a.m. Can you see here where he is</p> <p>22 instructing you on how the gross ups are going to be</p> <p>23 handled?</p> <p>24 A Give me just a second. Okay.</p> <p>25 Q So it's -- Mr. Beagle is describing to you how</p>
<p style="text-align: right;">Page 55</p> <p>1 Q Let's look at Exhibit 189. Go ahead and get</p> <p>2 yourself familiar with this document, it's got an e-mail</p> <p>3 chain again. Just tell me when you want to scroll up.</p> <p>4 (EXHIBIT 189 MARKED FOR IDENTIFICATION)</p> <p>5 A Okay. Go ahead -- okay.</p> <p>6 Q Remember this e-mail?</p> <p>7 A No, I don't. But I do now.</p> <p>8 Q Okay, all right. What's going on here? To me</p> <p>9 -- I mean, I don't want to put words in your mouth. But</p> <p>10 it looks like when you see the few e-mails here, where</p> <p>11 you're not happy. Looks like you're kind of upset. Can</p> <p>12 you explain what's going on?</p> <p>13 A To me, I think I felt like I was asking a lot</p> <p>14 of very specific questions on how to make this work, and</p> <p>15 I was getting a lot of vague answers. Because I didn't</p> <p>16 feel like -- either they didn't understand the</p> <p>17 questions, or they didn't know the answers, or they were</p> <p>18 still working on the solution. I didn't really know why</p> <p>19 or what was going on at the time. But apparently, I had</p> <p>20 been asking a lot of questions, and not getting a lot of</p> <p>21 specific answers about how to make things work the way</p> <p>22 they needed to.</p> <p>23 Q Okay. So that's sort of the frustration here</p> <p>24 that you're -- I mean, it looks like you're venting a</p> <p>25 little bit to one of your co-workers, Ms. Nall, correct?</p>	<p style="text-align: right;">Page 57</p> <p>1 this policy is going to work, right?</p> <p>2 A He was explaining to me how we were going to</p> <p>3 fix that particular payroll, yes.</p> <p>4 Q All right, okay. We're going to look at</p> <p>5 Exhibit 180. It's one we've also used before. Just</p> <p>6 like the other e-mails, why don't we just go ahead and</p> <p>7 start at the bottom, and we'll scroll up and let me know</p> <p>8 when you're ready.</p> <p>9 A Okay. Okay.</p> <p>10 Q You know, I think we've already covered this,</p> <p>11 right?</p> <p>12 A Right.</p> <p>13 Q You know what? I'm not going to have any</p> <p>14 questions for you on 180, we've already covered it in</p> <p>15 another exhibit. So let's look at Exhibit 169, again</p> <p>16 the e-mails. Sorry, this one is a little long. Why</p> <p>17 don't you start at the bottom and kind of just get</p> <p>18 familiar with it and I'll scroll up again, you let me</p> <p>19 know when you're ready.</p> <p>20 (EXHIBIT 180 MARKED FOR IDENTIFICATION)</p> <p>21 (EXHIBIT 169 MARKED FOR IDENTIFICATION)</p> <p>22 A Okay. Okay. Okay. Okay. Okay. Okay. Okay. Okay.</p> <p>23 Okay. Okay. All right. Okay.</p> <p>24 Q Okay. So sort of a high level summary. These</p> <p>25 are e-mails back and forth about sort of the details of</p>

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<p style="text-align: right;">Page 58</p> <p>1 dealing with these gross ups that we've been talking 2 about, right? 3 4 MR. STAMEY: Objection to form. 5 A Well, I think there were issues with the gross 6 ups, whatever you want to call it, day-rate adjustments, 7 however you want to word it. But there was questions 8 about whether we were paying guys who were off sick, 9 that sort of thing. 10 Q Right. And if you notice -- as you scroll 11 through here, did you notice that there's a subject line 12 or weekly report that you all are discussing? And that 13 number changes over time, you start with a four at the 14 top and it comes down to three? 15 A No. 16 Q Those weekly reports and down here it's a two. 17 And then originally, it's just weekly report. Do you 18 see that in the subject line? 19 A I do see that. 20 Q Okay. Is that referring to spreadsheets that 21 you guys would work in where you would keep track of who 22 needed a gross up or a day-rate adjustment and the 23 reasons? 24 A I think so. 25 Q Okay. At some point there's a question.</p>	<p style="text-align: right;">Page 60</p> <p>1 A Correct. 2 Q Shelly Wheeler is also copied on these, with 3 HP Services. That's Higher Power, correct? 4 A Yes. 5 Q Why was Shelly Wheeler included on these 6 e-mails? 7 A I'm not sure. I didn't start the chain so -- 8 Q Okay. When you're doing the calculations for 9 gross ups or pay rate adjustments, is this something 10 that you all would coordinate with Higher Power to get 11 their report in on the same report? 12 A You know I remember somebody doing a report 13 for them. I don't know if it was Shelly or JD, and I 14 don't know if it was on the same spreadsheet that we 15 use. But I believe the template for the spreadsheet was 16 the same as far as I know. 17 Q Okay. Back to the e-mails, it looks like on 18 3157 in this exhibit, which is the page number, and 19 3158, we have an answer from JD Kinsey letting you know 20 how they've been doing -- or how Cobra is doing it, 21 correct? 22 MR. STAMEY: Objection to form. 23 A As far as I know, when he says, "We've been 24 doing -- what we've been doing," he's talking about in 25 general, everyone.</p>
<p style="text-align: right;">Page 59</p> <p>1 You're asking JD Kinsey a question here about how to 2 handle sick days, right? 3 A Yes. 4 Q Which on page 3158; is that correct? 5 A That's correct. 6 Q Okay. JD Kinsey, I think you said this 7 earlier, but maybe I'm remembering from someone else's 8 depo. I think he was with Cobra. 9 A I don't know what entity he worked for. 10 I know he wasn't on the Five Star payroll. 11 Q Okay. You see his e-mail -- on page 3158, his 12 e-mail address is with @cobratd.com. Does that mean 13 he's with Cobra? 14 MR. STAMEY: Objection to form. 15 A I believe we all had cobratd e-mails at one 16 point, I'm not sure. 17 Q Okay. Michelle Poling's also had a cobratd, 18 right? 19 A She had a cobratd e-mail as well, yes. 20 Q I think you said that she was a Five Star 21 person, right? 22 MR. STAMEY: Objection to form. 23 A No, Michelle was not a Five Star employee. 24 Q Okay. So she wasn't -- it was Samantha Nall, 25 she's Five Star, right?</p>	<p style="text-align: right;">Page 61</p> <p>1 Q And it sounds like he's basically saying the 2 same thing Jeff Beagle was saying. When someone has a 3 day missing, or if they're one day off, their pay has to 4 be adjusted, correct? 5 MR. STAMEY: Objection to form. 6 A That's what he's saying. 7 Q And he talks about two different ways to make 8 that adjustment. He talks about adjusting the time -- 9 I'm sorry, that's not -- scratch that. Let's look at 10 what he says. "When someone has even one day off, it 11 affects the overall rate, and so their time needs to be 12 adjusted or a day-rate entered to adjust for the missing 13 amount." Do you understand that those are two ways of 14 making the adjustment? 15 A I'm not sure what he's meaning by "Their time 16 needs to be adjusted." 17 Q Okay. 18 A I don't know what that means. 19 Q Okay. Do you know what it means to enter a 20 day to adjust for the missing amount. 21 A There was an option in Paycom, I guess, to 22 enter a day-rate adjustment for that missing amount. 23 Q Okay. So in Paycom, if someone was shorted a 24 day or something, or you needed to make an adjustment, 25 you could just put in their day-rate right in the pay</p>

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<p style="text-align: right;">Page 62</p> <p>1 column directly, correct?</p> <p>2 MR. STAMEY: Objection to form.</p> <p>3 A I believe JD did do that --</p> <p>4 Q Okay.</p> <p>5 A -- at times.</p> <p>6 Q Right. Is that something you were aware of at</p> <p>7 the time?</p> <p>8 A What do you mean?</p> <p>9 Q Like is this something you became aware of</p> <p>10 after? Or when this was happening were you aware that</p> <p>11 J.D. would do that?</p> <p>12 A Yes, I was aware.</p> <p>13 Q Do you know who else knew he was doing that?</p> <p>14 A I believe Alex may have known. I believe</p> <p>15 Michelle knew, Michelle Poling. I don't know otherwise.</p> <p>16 Q Were you ever aware of anyone ever saying</p> <p>17 that's not the way it should be done, that was</p> <p>18 incorrect?</p> <p>19 A Yes.</p> <p>20 Q Who said that?</p> <p>21 A Well, I know I did on a few occasions. I gave</p> <p>22 him various reasons why that didn't work. It affected</p> <p>23 the way we tracked hours for OSHA. It also affected</p> <p>24 ability to do employment verifications for guys when</p> <p>25 they were purchasing, buying homes and for the banks to</p>	<p style="text-align: right;">Page 64</p> <p>1 A I do.</p> <p>2 Q Who's Ken Kinsey?</p> <p>3 A JD father's and the VP of Cobra -- one of the</p> <p>4 Cobra entities.</p> <p>5 Q Okay. Was the fact that J.D. was the son of</p> <p>6 one of the VPs a factor in maybe the inability to get</p> <p>7 J.D. on board with entering the payroll correctly?</p> <p>8 MR. STAMEY: Objection to form.</p> <p>9 A I can't speak to what JD's problem was with</p> <p>10 getting on board with that. I have no idea.</p> <p>11 Q All right. But even though he was the son of</p> <p>12 a VP, that didn't sway you. You told him that he wasn't</p> <p>13 supposed to be doing it this way, right?</p> <p>14 A Correct.</p> <p>15 Q And he kept doing it?</p> <p>16 A Correct.</p> <p>17 Q Did you ever complain to anyone above JD that</p> <p>18 could've put a stop to that practice?</p> <p>19 A I don't know who could've put a stop to it.</p> <p>20 I do remember bringing in the point to Michelle Poling</p> <p>21 and I don't know if I actually mentioned it to Alex or</p> <p>22 not, but I do feel like Alex was aware. I don't know</p> <p>23 why I feel like that. I don't know if there was a</p> <p>24 specific e-mail or something, but I feel like Alex knew</p> <p>25 and had tried to persuade him not to do that, but I</p>
<p style="text-align: right;">Page 63</p> <p>1 send employment verifications. There were a lot of</p> <p>2 reasons that that was not the ideal way of entering</p> <p>3 hours.</p> <p>4 Q Okay. So you had definitely told him that in</p> <p>5 your opinion that wasn't the correct way to do it. Did</p> <p>6 he have a response?</p> <p>7 A I don't remember a specific response other</p> <p>8 than I got the feeling he just thought it was easier.</p> <p>9 Q Okay. And to be fair, it's not like you could</p> <p>10 order him around because he doesn't work for you, right?</p> <p>11 A That's correct.</p> <p>12 Q In fact, I think Five Star is considered to be</p> <p>13 like a contractor of Cobra at this point; is that right?</p> <p>14 A I haven't --</p> <p>15 Q You don't know?</p> <p>16 A No. I mean, we were, I assume, a subsidiary</p> <p>17 or owned by Cobra Energy. One of the Cobra entities.</p> <p>18 Q Okay. From your perspective, would JD Kinsey</p> <p>19 be a superior in the chain of command?</p> <p>20 A No.</p> <p>21 Q Okay. How would you view him in the chain of</p> <p>22 command?</p> <p>23 A I don't know that I did really. He was</p> <p>24 basically hired to do payroll for Puerto Rico hours.</p> <p>25 Q Do you know who Ken Kinsey is?</p>	<p style="text-align: right;">Page 65</p> <p>1 can't tell you why I think that.</p> <p>2 Q Okay. Let's look at Exhibit 183. It's been</p> <p>3 used before. And this one's short. Why don't you go</p> <p>4 ahead and take a look at this one and let me know when</p> <p>5 you want to scroll up.</p> <p>6 (EXHIBIT 183 MARKED FOR IDENTIFICATION)</p> <p>7 A Okay. Just a little, please. Okay. Okay.</p> <p>8 Q So do you understand this as being an e-mail</p> <p>9 that essentially is a cover e-mail for a spreadsheet</p> <p>10 that's attached for the weekly report update number six</p> <p>11 for January 26?</p> <p>12 A It appears so.</p> <p>13 Q Right. And so, we're going to be able to see</p> <p>14 in this report some examples of the day-rate adjustments</p> <p>15 or gross ups, right?</p> <p>16 A I assume.</p> <p>17 Q Let's go ahead and do that. I'm going to show</p> <p>18 you plaintiff's Exhibit 184. And for the court</p> <p>19 reporter, this is a native spreadsheet that is not</p> <p>20 marked, but it is Exhibit 184, the Bates number and also</p> <p>21 the file name is Mammoth003145_confidential. All right.</p> <p>22 Ms. Davis, looking at this spreadsheet on the tab</p> <p>23 "Corrections needed January 26, '18." Do we see here</p> <p>24 examples of the day-rate adjustments that we've been</p> <p>25 talking about?</p>

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<p style="text-align: right;">Page 66</p> <p>1 (EXHIBIT 184 MARKED FOR IDENTIFICATION)</p> <p>2 A I believe so.</p> <p>3 Q Okay. Can you see it clearly on your screen?</p> <p>4 A Yeah, it's a little small, but I can see it.</p> <p>5 Q Okay. I was trying to be able to get it so</p> <p>6 you can see the whole -- the whole sheet, but we can</p> <p>7 zoom in a little bit.</p> <p>8 A Okay.</p> <p>9 Q So it looks like to me that you have several</p> <p>10 guys listed here and it has the number of days that they</p> <p>11 worked and what their day-rates were correct?</p> <p>12 A Uh-huh. That's correct. Sorry.</p> <p>13 Q Yeah, that's fine. And it looks like this is</p> <p>14 a situation where they didn't work the full 14 days in</p> <p>15 the pay period, correct?</p> <p>16 A That's right.</p> <p>17 Q So for all of these, it's 12 days out of the</p> <p>18 14-day period, except for line 19 for Steven Fellers. He</p> <p>19 worked 13, correct?</p> <p>20 A That's correct.</p> <p>21 Q And these amounts, the day-rate adjustment</p> <p>22 amount, is going to be the amount that's going to be</p> <p>23 added on to their hourly and overtime pay to get them up</p> <p>24 to what their day-rate pay would be correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. STAMEY: Objection, form.</p> <p>2 A Yeah, I would think so.</p> <p>3 Q All right. Okay. And looking at the tab for</p> <p>4 January 19, are you aware of any inaccuracies on the</p> <p>5 description of the issue?</p> <p>6 A I can't read the descriptions of the issues.</p> <p>7 Q Oh.</p> <p>8 A Sorry. They're too small.</p> <p>9 Q Yeah. Look, I can zoom in all day for you.</p> <p>10 A Okay.</p> <p>11 Q Tell me when you can --</p> <p>12 A A little bit more, please.</p> <p>13 Q Yeah. I'm --</p> <p>14 A That's better. Okay. And what's your</p> <p>15 question?</p> <p>16 Q Yeah. The question was: Are you aware of any</p> <p>17 inaccuracies after reviewing the description of the</p> <p>18 issue on this tab "Corrections needed January 19"?</p> <p>19 A Oh yeah. I would have no way of knowing.</p> <p>20 Q Okay. And the same one for January 12.</p> <p>21 The same question on the description of the issue, are</p> <p>22 you aware of any inaccuracies there? And let me zoom.</p> <p>23 I'll keep zooming in until you say stop.</p> <p>24 A I'm good.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q And you also have a description of the issue</p> <p>2 here, where it -- all of them say the same thing. It</p> <p>3 says, "Day-rate adjustment needed equals did not work</p> <p>4 entire two week period in Puerto Rico." Do you see</p> <p>5 that?</p> <p>6 A I do.</p> <p>7 Q Okay. Is that a -- is that a true description</p> <p>8 of the issue here?</p> <p>9 MR. STAMEY: Objection, form.</p> <p>10 A That was the terms that we used. Yes.</p> <p>11 Q Okay. So January 19, that's the week before.</p> <p>12 It's also on here, right?</p> <p>13 A I believe so.</p> <p>14 Q Okay. So the same thing, we have some</p> <p>15 adjustments that need to be made. And the description</p> <p>16 of the issues in Colum L, correct?</p> <p>17 A I believe so.</p> <p>18 Q Okay. Were you the one preparing these</p> <p>19 reports or you working with other people on it?</p> <p>20 A I did a lot of it. I'm not going to say that</p> <p>21 J.D. did not contribute because he -- he may have.</p> <p>22 Q Okay. Safe to say that you're not going to be</p> <p>23 able to remember anyone's particular issue on any</p> <p>24 particular check in detail, that we would have to rely</p> <p>25 on these spreadsheets, for example?</p>	<p style="text-align: right;">Page 69</p> <p>1 A I'm not aware of any. I mean, I wouldn't</p> <p>2 know.</p> <p>3 Q Okay. Now on this same spreadsheet, we have a</p> <p>4 tab for "Higher Power terms, Puerto Rico." Do you know</p> <p>5 why this would be on the same spreadsheet as Five Star?</p> <p>6 Or it's in the same Excel workbook as Five Star's</p> <p>7 information?</p> <p>8 A I do not know.</p> <p>9 Q Okay. Let's take a look at it. I realize you</p> <p>10 may -- I don't know if you've seen it or not. Do you --</p> <p>11 do you recognize this as a document you've ever seen</p> <p>12 before, this tab "Higher Power terms PR"?</p> <p>13 A I do not recognize it.</p> <p>14 Q Okay. Who would -- if you know, do you know</p> <p>15 who would be taking the information from Higher Power</p> <p>16 and the information from Five Star and putting them into</p> <p>17 the same Excel workbook?</p> <p>18 A Possibly JD? I don't know for a fact.</p> <p>19 Q Okay.</p> <p>20 On the tab "Five Star terms, Puerto Rico,"</p> <p>21 can you -- can you tell us what this is, do you know?</p> <p>22 A I assume it was the termination for Jacob</p> <p>23 Rendon.</p> <p>24 Q Oh. Oh, okay. I was thinking terms like</p> <p>25 contracts or something. But you -- these, these</p>

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<p style="text-align: right;">Page 70</p> <p>1 spreadsheets "terms" is termination dates; is that 2 right?</p> <p>3 A That's correct.</p> <p>4 Q Okay. Now earlier you testified that you -- 5 no -- scratch that. No. I understood that you're 6 actually talking about something else. All right. We're 7 going to look at another e-mail chain with the client. 8 This is labeled as Exhibit 190 and let's go ahead and - 9 - it's not very long. Let's scroll to the bottom and 10 let's have you review it, and we'll talk about it. 11 Okay?</p> <p>12 A Okay. Okay. Okay. Okay.</p> <p>13 Q Okay. Can you -- can you tell us what's going 14 on with these e-mails?</p> <p>15 (EXHIBIT 190 MARKED FOR IDENTIFICATION)</p> <p>16 A It looks like I was trying to get JD once 17 again to stop entering day-rate -- solely just day-rate 18 entries into Paycom without entering the hours.</p> <p>19 Q Okay.</p> <p>20 A And he's talking about needing help with the 21 payroll process.</p> <p>22 Q Okay. What did you mean by "looking forward 23 to strictly hourly rates as well" here on July 3 at 24 6:55?</p> <p>25 A I think that if I'm not mistaken, we were</p>	<p style="text-align: right;">Page 72</p> <p>1 Samantha was the main one that took care of the 2 financial end of things.</p> <p>3 Q Okay.</p> <p>4 A I knew it had something to do with the moving 5 of the money between the entities.</p> <p>6 Q Okay. So where did the money come from for 7 Five Star to meet payroll?</p> <p>8 A I have no idea. I would assume one of the 9 other entities. I don't know what -- I don't -- I was 10 never involved in that.</p> <p>11 Q Okay. I'm going to show you Exhibit 162. 12 And go ahead and start at the bottom. Let's scroll up 13 like we've been doing. Let me know when you're ready.</p> <p>14 (EXHIBIT 162 MARKED FOR IDENTIFICATION)</p> <p>15 A Okay. Okay.</p> <p>16 Q All right. So you've mentioned Samantha Nall. 17 Like you said, she was the one that would've been more 18 privy to the financial issue with Five Star.</p> <p>19 A Correct.</p> <p>20 Q Who's Bill Short?</p> <p>21 A I have no idea.</p> <p>22 Q Okay. Do you remember these e-mails that 23 you're copied on about Five Star not having enough money 24 in its account to cover payroll?</p> <p>25 A I mean, I see that I was on there, but I don't</p>
<p style="text-align: right;">Page 71</p> <p>1 transitioning to a different contract soon or something. 2 And the men would no longer be making that reference or 3 having that day-rate amount as something that they would 4 be looking for, needing, or expecting.</p> <p>5 Q Right. And then from the perspective of -- of 6 -- from your perspective, that was going to be something 7 that'd be a lot easier to administer as -- from the HR 8 perspective, correct?</p> <p>9 A Well, I wouldn't have to worry about J.D. 10 entering it wrong all the time, for one.</p> <p>11 Q Okay. And you wouldn't have to be doing all 12 these payroll correction sheets all the time?</p> <p>13 A Correct. Well, even then, you know, hours got 14 missed. Things -- there was still a correction sheet 15 that went, you know, people messed up their direct 16 deposit information and -- and you'd have to get a 17 correction. There were any number of corrections still 18 needed, but not for that reason.</p> <p>19 Q Right. But that's like every payroll. 20 I mean, that just goes with the territory.</p> <p>21 A Right.</p> <p>22 Q Okay. Were you aware of Five Star not having 23 enough money to meet payroll when they -- when they are 24 first starting to work on the island?</p> <p>25 A I had a little bit of knowledge on that, but</p>	<p style="text-align: right;">Page 73</p> <p>1 remember them specifically.</p> <p>2 Q Okay. And I -- you know, I don't have 3 Samantha Hall right in front of me now, but you know, 4 Samantha -- sorry, Samantha Nall. You know her well, 5 correct?</p> <p>6 A I do.</p> <p>7 Q All right. And you know her well enough that 8 she wouldn't write an e-mail that would be intentionally 9 dishonest?</p> <p>10 MR. STAMEY: Objection, form.</p> <p>11 A Not to my knowledge.</p> <p>12 Q All right. So we can trust what she writes in 13 e-mails, correct?</p> <p>14 A In my opinion, yes.</p> <p>15 Q Okay. Did you have any conversations with the 16 Higher Power people about how they were going to meet 17 payroll?</p> <p>18 A Never that I remember.</p> <p>19 Q Okay. Now, I talked to you -- we talked a lot 20 about these day-rate adjustments or gross-ups. Can you 21 describe to me the process of how they would get entered 22 into those sheets and get -- and get applied to 23 paychecks? How did that work?</p> <p>24 A Well, I know from my perspective. I don't 25 know what JD did. I don't know what they did at Mammoth</p>

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<p style="text-align: right;">Page 74</p> <p>1 once that information was sent. I just know that I've</p> <p>2 literally scrolled through every single timesheet in</p> <p>3 Paycom to see who had worked the full 14 days and who</p> <p>4 did not, looked for anything that looked odd or that</p> <p>5 would stand out as being anything of an error or could</p> <p>6 -- or whatever. And especially if I knew someone</p> <p>7 specifically was on island but was missing a day or</p> <p>8 things like that, I would look for things like that. And</p> <p>9 so, it became too much to do and to get done prior to</p> <p>10 payroll getting completed and submitted. But that's --</p> <p>11 I would do that and look for guys and make sure that</p> <p>12 those had been added to the spreadsheets that J.D.</p> <p>13 submitted.</p> <p>14 Q Okay. So when you're -- when you're reviewing</p> <p>15 Paycom for these -- for the times where they didn't work</p> <p>16 the full week, things like that, which workers would you</p> <p>17 have been doing that for?</p> <p>18 A Most likely I would have filtered for anyone</p> <p>19 working in Puerto Rico that -- the only thing I had</p> <p>20 access to in Paycom was Five Star Electric employees.</p> <p>21 I -- I had no access to any other entity, their payroll,</p> <p>22 their timesheets, nothing. So I was just looking at</p> <p>23 Five Star Electric employees who were stationed in</p> <p>24 Puerto Rico.</p> <p>25 Q Okay. Do you know who at Higher Power</p>	<p style="text-align: right;">Page 76</p> <p>1 A It looks like this was around the time we were</p> <p>2 transitioning contracts. And at one point we switched</p> <p>3 to a per diem. I guess when the contracts changed, we</p> <p>4 changed over to paying the guys per diem, rather than</p> <p>5 paying for the meals and lodging. And this was just</p> <p>6 kind of what -- me asking questions about that process</p> <p>7 so that I could provide letters of employment for those</p> <p>8 guys seeking rental property in San Juan or Puerto Rico</p> <p>9 or somewhere.</p> <p>10 Q Okay. And can you -- can you explain to us</p> <p>11 why the only folks that you seem to be asking are Cobra</p> <p>12 people, correct?</p> <p>13 A Can we scroll down to the first e-mail?</p> <p>14 Q Yeah.</p> <p>15 A Well, my -- it was initially to Michelle</p> <p>16 Poling. And she was my -- at that point, my HR contact</p> <p>17 in Puerto Rico. So she was my "To" person and Scott</p> <p>18 Whitsett of course, was the president of Five Star.</p> <p>19 And then Denise was at one point, I guess, the</p> <p>20 operational manager for Puerto Rico down there for all -</p> <p>21 - for everyone. So that's who I included on the</p> <p>22 e-mails.</p> <p>23 Q Right. Okay.</p> <p>24 A Michelle brought others into the e-mail.</p> <p>25 I don't -- I don't know. I guess she thought they may</p>
<p style="text-align: right;">Page 75</p> <p>1 would've been doing the work that you were doing or</p> <p>2 similar?</p> <p>3 A No, I don't. As far as I know JD was the only</p> <p>4 one doing that for Higher Power. But I don't know that</p> <p>5 to be a fact.</p> <p>6 Q Okay. Do you remember how housing worked on</p> <p>7 the island?</p> <p>8 A I remember that initially there were barges</p> <p>9 that the employees stayed on. And then at one point,</p> <p>10 the barges went away, for whatever reason, and they had</p> <p>11 transitioned people to resorts or hotels or rental cabin</p> <p>12 -- I don't know. Different -- they kind of scattered</p> <p>13 and did different things at that point.</p> <p>14 Q Okay. Oh, were you ever aware of who was</p> <p>15 paying for the lodging?</p> <p>16 A No. I had no direct knowledge of that.</p> <p>17 I just knew it was paid for.</p> <p>18 Q Okay. I'm going to show you Exhibit 191. And</p> <p>19 I'll -- it's not very long. We'll start at the bottom</p> <p>20 here, if you want to review that and let me know when</p> <p>21 you want to scroll up.</p> <p>22 (EXHIBIT 191 MARKED FOR IDENTIFICATION)</p> <p>23 A Okay. Okay. Okay. Okay.</p> <p>24 Q All right. Can you describe to us what was</p> <p>25 going on in these e-mails?</p>	<p style="text-align: right;">Page 77</p> <p>1 have more knowledge of it. I don't know.</p> <p>2 Q Okay. But safe to say this is -- this is</p> <p>3 something that would've required Cobra's input because</p> <p>4 they were in charge of the housing, essentially?</p> <p>5 MR. STAMEY: Objection, form.</p> <p>6 A I mean, Cobra was the one in charge of the --</p> <p>7 everything, I thought. I mean -- you know what I mean?</p> <p>8 Like the -- that didn't come out right. They were the</p> <p>9 ones with the contract, getting the information was</p> <p>10 going to be telling us about the per diem and the</p> <p>11 housing and the lodging. So that's why I asked them.</p> <p>12 Plus, Michelle was at that point, transitioned over into</p> <p>13 my HR contact in Puerto Rico. And to my knowledge, she</p> <p>14 was a Cobra employee.</p> <p>15 Q Okay. Hey, Harris, let's take a quick break.</p> <p>16 I'm going to review some things, but I think I'm getting</p> <p>17 close to getting done, if not done.</p> <p>18 MR. STAMEY: Okay. While you're at it --</p> <p>19 VIDEOGRAPHER: Off the record at 11:32 a.m.</p> <p>20 (OFF THE RECORD)</p> <p>21 VIDEOGRAPHER: We're back on record at 11:45</p> <p>22 a.m.</p> <p>23 BY MR. MOULTON:</p> <p>24 Q Okay. Ms. Davis, I want to talk to you about</p> <p>25 something I forgot to ask you about earlier, which is,</p>

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<p style="text-align: right;">Page 78</p> <p>1 can you describe to us the reason why you left Five 2 Star?</p> <p>3 A I was offered a position as an HR manager for 4 the City of Madisonville, and I had a very good friend 5 who was Deputy City Administrator. And I just felt like 6 it would be a -- a good career move. There was less 7 stress. There was less hours. There were a lot of 8 better benefits, free health insurance, things like that 9 nature.</p> <p>10 Q Okay. Have you answered all my questions 11 truthfully today?</p> <p>12 A I have.</p> <p>13 Q Sitting here now, is there anything that 14 you're aware of that you would like to clarify or amend 15 to any of the answers that you've given today?</p> <p>16 A I don't think so.</p> <p>17 Q Okay. I'll pass the witness.</p> <p>18 MR. STAMEY: Dave, if you could bring up 19 Exhibit 186 and scroll all the way to the bottom, 20 I think you added the last guy's e-mails buried in 21 there. You know what I'm talking about?</p> <p>22 MR. MOULTON: Yeah. I know exactly what you're 23 talking about. I just want to make sure I share the 24 right screen. Okay. So Kevin Slaughter?</p> <p>25 CROSS EXAMINATION</p>	<p style="text-align: right;">Page 80</p> <p>1 You see either 10-20, 10-22, 10-23?</p> <p>2 A Uh-huh.</p> <p>3 Q Are all of these e-mails and these 4 communications from these potential recruits -- were 5 these before or after you learned about the actual pay 6 plan that was going to be used for Puerto Rico?</p> <p>7 MR. MOULTON: Objection, form.</p> <p>8 A I'm sorry?</p> <p>9 MR. MOULTON: I just have an Objection to form. 10 Go ahead.</p> <p>11 A Okay. I believe this was prior to receiving 12 the -- the final pay plan that gave us our hourly rates 13 that were equivalent to make the day-rates.</p> <p>14 Q Okay. And so, in this -- this last e-mail, 15 we see Kevin Slaughter sends to you on October 20, 2017. 16 "Hello. I seen your ad on Linejunk and was interested 17 in going to PR for storm work." And you testified 18 earlier, you didn't recall anyone -- you didn't recall 19 placing an ad on Linejunk yourself, correct?</p> <p>20 A I do not recall that. No.</p> <p>21 Q All right. Was it possible for somebody else 22 to put an ad on Linejunk or to share a potential post on 23 Linejunk?</p> <p>24 A I would assume --</p> <p>25 MR. MOULTON: Objection to form.</p>
<p style="text-align: right;">Page 79</p> <p>1 BY MR. STAMEY:</p> <p>2 Q Yes, sir. So Ms. Davis, tell us about how the 3 recruiting process went once you got the instructions 4 from Mr. Whitsell to start finding people to send to 5 Puerto Rico?</p> <p>6 A So we put a post on Facebook and told folks to 7 contact myself or Jeremy about going and gave them what 8 information we had at the time once they contacted us. 9 You know, I can remember Jeremy saying, "We'll probably 10 get five or 10 calls." And there were a lot more than 11 that. I don't know how many there were, but there was a 12 lot. And we just started giving them the information 13 that we had and starting to try to build a base of folks 14 that we could pull from.</p> <p>15 Q And do you recall approximately what the 16 timeframe was when you started recruiting, versus when 17 you first learned about a pay plan being put in place 18 that was going to be hourly with overtime?</p> <p>19 A I think it was around a -- a week or so. 20 I -- I don't know exactly, but it was several days in 21 before we actually knew a pay plan was going to be 22 structured.</p> <p>23 Q So you can see in Exhibit 186 on the -- you 24 see the bookmarks on the left. You can see the dates of 25 all of these e-mails that Mr. Moulton has provided.</p>	<p style="text-align: right;">Page 81</p> <p>1 A -- I would assume so.</p> <p>2 Q And so when -- you actually posted something 3 on the Five Star web page, right?</p> <p>4 A Yes. I do remember doing that.</p> <p>5 Q And are people able to share posts from the 6 Five Star web page on other web pages on Facebook like 7 Linejunk?</p> <p>8 MR. MOULTON: Objection to form.</p> <p>9 A Possibly.</p> <p>10 Q Okay.</p> <p>11 A I don't know.</p> <p>12 Q What was your response to Mr. Slaughter that 13 same day? Can you read that for us?</p> <p>14 A I asked him what his classification skill 15 level was. "We are finalizing pay scale now. We have a 16 dollar amount per day per classification, but we are 17 trying to get clarification on an hourly rate, et 18 cetera. Looking to do 45-day rotation. But have a 19 guaranteed 120-day contract as of now. Please send me 20 your phone number and class and I can call you with more 21 -- final info."</p> <p>22 Q So what do you remember about getting 23 clarification on an hourly rate at this timeframe?</p> <p>24 MR. MOULTON: Objection, form</p> <p>25 A Those first few days was really busy and just</p>

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<p style="text-align: right;">Page 82</p> <p>1 a lot of information coming and going. And no one was 2 really sure what we were going to be doing and how we 3 were going to pay it out. I know -- I mean, one of my 4 first initial things was to -- to Scott and Samantha was 5 "How can we pay a day-rate? That's -- that's not really 6 legal." So there was a lot of talk back and forth of 7 how that was actually going to happen in the end. And 8 that was still -- I still felt like that was nothing 9 that had been decided at that point.</p> <p>10 Q And here you specifically mentioned to 11 Mr. Slaughter clarification on an hourly rate. Do you 12 recall mentioning this issue with an hourly rate to 13 other recruits at this timeframe?</p> <p>14 A Could have --</p> <p>15 MR. MOULTON: Objection, form.</p> <p>16 A I don't know.</p> <p>17 MR. STAMEY: Anthony, can you bring up, let's 18 see -- exhibit -- or let's do Mammoth 3492. Which - 19 - Dave, what was your last exhibit number? Was it 20 191?</p> <p>21 MR. MOULTON: Yeah, 191 was my last number.</p> <p>22 MR. STAMEY: Okay. So we'll mark this as 23 Exhibit 192.</p> <p>24 MR. MOULTON: Can you tell me the Bates number?</p> <p>25 MR. STAMEY: The Bates number will be Mammoth</p>	<p style="text-align: right;">Page 84</p> <p>1 the calculation per week."</p> <p>2 Q When was the first time that you'd heard about 3 the hourly and overtime rates being used for the pay 4 plan?</p> <p>5 A I'm not sure if Alex may have called me on the 6 phone prior to sending this e-mail. It seems like he 7 and I had a phone conversation as well as him sending 8 the e-mail. So I can't say for sure if it was -- if it 9 all happened right at the same time, or if this was the 10 first that I'd heard of it. But I -- I mean, you all 11 have my e-mails, so you would have to kind of look at 12 that. As far as whether or not I had had an e-mail 13 prior to this, I don't know what if I did.</p> <p>14 MR. STAMEY: And Anthony, if you could bring up 15 Mammoth 3394, which was tab six. And we'll mark 16 that as Exhibit 193. And so, you -- Anthony, if 17 you can zoom out a little bit, so we can see that 18 this is --</p> <p>19 BY MR. STAMEY:</p> <p>20 Q So we see the e-mail that we saw on Exhibit 21 193 below, from Mr. Cowman. And then you forward this 22 e-mail to Scott Whitsell that same day. And you say, 23 "Are these -- so we are using these, correct"? Do you 24 recall why you sent these offer letters to Scott?</p> <p>25 (EXHIBIT 193 MARKED FOR IDENTIFICATION)</p>
<p style="text-align: right;">Page 83</p> <p>1 3492.</p> <p>2 MR. MOULTON: Okay.</p> <p>3 MR. STAMEY: And Dave, I think you've got to 4 stop sharing so Anthony can share.</p> <p>5 MR. MOULTON: I can't see it.</p> <p>6 MR. STAMEY: And can you zoom in, Anthony, so 7 we can read the e-mail?</p> <p>8 BY MR. STAMEY:</p> <p>9 A Oh, that's much better. Thank you.</p> <p>10 Q Okay. And scroll up a little bit so we can 11 see who it's from time, date, et cetera. Ms. Davis, 12 we've got what's been marked as Exhibit 192. This is an 13 e-mail from Alex Kalman to you on 10-24-2017, the 14 subject of which is "Offer Letters," and the attachments 15 -- there's a number of attachments there that are offer 16 letter templates. Do you see that?</p> <p>17 (EXHIBIT 192 MARKED FOR IDENTIFICATION)</p> <p>18 A I see that.</p> <p>19 Q And then in the e-mail, Mr. Kalman writes to 20 you, "Attached are the offer letters and the 21 immunization policy documents for the employees to sign. 22 Some things to note" -- item number one, can you read 23 that for us?</p> <p>24 A "The rate of pay does not equal the day rate 25 via straight time, but factors in overtime rates into</p>	<p style="text-align: right;">Page 85</p> <p>1 A I feel like Scott and I had discussed at 2 length the whole pay situation. And so, when I saw 3 those, I -- they were different than what we had 4 previously discussed, so I wanted Scott to see them. 5 I always ran everything through him. And so, I wanted 6 him to clarify that he -- this is what he wanted me to 7 use, and he knew this was the documents we would be 8 using.</p> <p>9 Q Okay. And before you had -- actually Anthony, 10 why don't we bring up -- let's see, I believe it is 11 Exhibit 166. Do you recall talking about Exhibit 166, 12 the e-mail where you said, "This is stupid. Like I 13 said, stupid" earlier?</p> <p>14 A Right.</p> <p>15 Q And in this e-mail, Jeff Beagle gives you the 16 mathematical explanation of the pay plan. Do you recall 17 that?</p> <p>18 A Uh-huh. Yes.</p> <p>19 Q Now earlier you provided some testimony about 20 some concerns you'd had over the potential for paying a 21 day-rate relative to the FSLA. Can you give us an 22 explanation of what that concern was, and then how that 23 concern was ultimately alleviated from your perspective?</p> <p>24 MR. MOULTON: Objection, form. Go ahead.</p> <p>25 A I know initially -- I can remember my first</p>

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<p style="text-align: right;">Page 86</p> <p>1 thought being, "God, how can we pay a day-rate? What --</p> <p>2 nobody pays a day-rate. What's -- what's that mean?"</p> <p>3 So those were some of the thoughts that went through my</p> <p>4 head and that I -- concerns that I took to Scott</p> <p>5 Whitsell. And so later, whenever I saw offer letters</p> <p>6 coming out and the spreadsheet in Jeff's explanation,</p> <p>7 I was relieved to know that there was an hourly rate,</p> <p>8 overtime rate. And -- and the way I kind of looked at</p> <p>9 it was, we had advertised a day-rate that was a minimum</p> <p>10 amount that they would make on a day -- on a daily</p> <p>11 basis, but that we would be paying them on an hourly,</p> <p>12 plus overtime basis. So I felt relieved about that.</p> <p>13 It was just a lot more work to explain to the men, and</p> <p>14 to make sure that the men understood no one was trying</p> <p>15 to short them or keep them from making the rates that</p> <p>16 they were initially given.</p> <p>17 Q Once Mr. Beagle explained how the math was</p> <p>18 going to work and that the men were going to be paid on</p> <p>19 an hourly basis with an hourly rate and overtime rate,</p> <p>20 did you continue to have any concerns with respect to</p> <p>21 the legality?</p> <p>22 A No. Not at that time.</p> <p>23 Q Okay. Anthony, can you bring up Mammoth 3761,</p> <p>24 which is the Scott Whitsell e-mail with the updated</p> <p>25 offer letter?</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. STAMEY: Okay.</p> <p>2 MR. ARTEAGA: I can pull it up.</p> <p>3 MR. STAMEY: All right. Let's go to the</p> <p>4 beginning of the chain and let -- let Missy be able</p> <p>5 to read through the chain so she can see the entire</p> <p>6 e-mail.</p> <p>7 BY MR. STAMEY:</p> <p>8 Q Missy, just let him know when you want to</p> <p>9 scroll out, scroll in, and zoom or -- and scroll</p> <p>10 through.</p> <p>11 A Okay. Yeah, scroll up just a little for me.</p> <p>12 Okay, keep going. Okay. Okay. Okay. Okay. Okay.</p> <p>13 Okay. Okay. Okay.</p> <p>14 Q So we see the last e-mail in the chain, Scott</p> <p>15 Whitsell circulates a new version of the offer letter to</p> <p>16 Jeff Beagle, Keith Ellison, and Ken Kinsey on October</p> <p>17 24, 2017. Anthony, can you go to the attachment that he</p> <p>18 sent?</p> <p>19 (EXHIBIT 194 MARKED FOR IDENTIFICATION)</p> <p>20 MR. ARTEAGA: Sure.</p> <p>21 MR. STAMEY: If you can zoom in a little bit so</p> <p>22 that we can see the -- the wording that would be</p> <p>23 great.</p> <p>24 MR. ARTEAGA: I got you.</p> <p>25 BY MR. STAMEY:</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. ARTEAGA: Is that a tab E notebook?</p> <p>2 MR. STAMEY: It's one of the documents we added</p> <p>3 at the end.</p> <p>4 MR. MOULTON: Okay.</p> <p>5 MR. STAMEY: Anthony, also just -- you're</p> <p>6 sharing your screen, I don't know if you're</p> <p>7 intending to do that.</p> <p>8 MR. ARTEAGA: No, I was not intending to do</p> <p>9 that. Give me a second.</p> <p>10 MR. STAMEY: Yeah. You probably want to share</p> <p>11 an app versus your screen.</p> <p>12 MR. ARTEAGA: Right. Give me a second. I'm</p> <p>13 going to pull up 3761.</p> <p>14 MR. MOULTON: Okay. While he is doing that,</p> <p>15 Harris, are you marking a new exhibit, or is this an</p> <p>16 old one?</p> <p>17 MR. STAMEY: I believe that this will be a new</p> <p>18 one.</p> <p>19 MR. MOULTON: Okay.</p> <p>20 MR. STAMEY: I think -- was the next one -- was</p> <p>21 it 193 or 4?</p> <p>22 MR. ARTEAGA: It's going to be 194.</p> <p>23 MR. STAMEY: 194. That's it. And Anthony,</p> <p>24 you have the attachment to this, right?</p> <p>25 MR. ARTEAGA: Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 Q So on the attachment, do you see it says, "Our</p> <p>2 goal is to work 12 hours a day and not to work at night.</p> <p>3 As many of you know and are accustomed to with storms,</p> <p>4 certain situations may arise that could require longer</p> <p>5 hours, but will not exceed 16 hours." Do you recall any</p> <p>6 conversations with Mr. Whitsell about adding that</p> <p>7 language to the letter?</p> <p>8 MR. MOULTON: Objection, form.</p> <p>9 A Seems like I do remember he and I discussing</p> <p>10 that we knew it was very traditional for storm work to</p> <p>11 be 16 hours. But I'm not sure exact -- I mean, I -- I</p> <p>12 don't remember that exactly, but I do remember he and I</p> <p>13 worked on it.</p> <p>14 Q What is your understanding of the idea of</p> <p>15 working, or being available to work, in the context of</p> <p>16 16 hours?</p> <p>17 MR. MOULTON: Objection, form.</p> <p>18 A Well, not only from working in the industry,</p> <p>19 but also my husband works as a lineman. So it's my</p> <p>20 understanding that they do not work just constant from</p> <p>21 the whole 16 hours, even if they are on storm. So their</p> <p>22 mealtimes are included, their break times are included,</p> <p>23 they may even be sent back to the show-up areas, or be</p> <p>24 waiting in their trucks, or different things on a</p> <p>25 general, in general storm. So they are paid for the</p>

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<p style="text-align: right;">Page 90</p> <p>1 hours that they are available to work, which is</p> <p>2 generally 16 hours, to comply with the OT regulation and</p> <p>3 that sort of thing.</p> <p>4 Q And when this offer letter got finalized with</p> <p>5 Mr. Whitself, was this what you ultimately used at the</p> <p>6 orientations with the guys?</p> <p>7 MR. MOULTON: Objection, form.</p> <p>8 A I believe so.</p> <p>9 Q Anthony, if you could scroll down so we can</p> <p>10 see the section in the table. "Your Puerto Rico storm</p> <p>11 rate," it says "\$900 per day that will be broken down</p> <p>12 hourly over 16 hours daily." What did you explain to</p> <p>13 people at the orientation about how that pay was going</p> <p>14 to work?</p> <p>15 MR. MOULTON: Objection, form.</p> <p>16 A To -- to my knowledge, what we would always</p> <p>17 explain to them was, yes, here's how the math works.</p> <p>18 We would even -- I think we even had maybe a dry erase</p> <p>19 board in the orientations that we could do the math for</p> <p>20 them on the board or show them how the math worked.</p> <p>21 If you worked 16 hours a day -- or you were paid 16</p> <p>22 hours a day, seven days a week, that it worked out to be</p> <p>23 the 900, the 1,000, the 1250, whatever. And then we</p> <p>24 also -- if you notice there's a starting hourly rate</p> <p>25 that's blank in this letter, we wanted them to know if</p>	<p style="text-align: right;">Page 92</p> <p>1 would be -- let me do --</p> <p>2 MR. MOULTON: "Stupid e-mail." Yeah, I can</p> <p>3 pull it up for you too, if you want.</p> <p>4 MR. STAMEY: Hold on, I think I've got another</p> <p>5 -- it's on. Look at --</p> <p>6 MR. MOULTON: I like how we labeled -- well, at</p> <p>7 least I've started to label these e-mails based on -</p> <p>8 - Ms. Davis' colorful -- color -- colorful</p> <p>9 explanations.</p> <p>10 MR. STAMEY: Yeah. Dave, if you can bring up</p> <p>11 188? I don't seem to have --</p> <p>12 MR. MOULTON: You want 188. Okay.</p> <p>13 MR. STAMEY: Yes, please.</p> <p>14 MR. MOULTON: Just double checking to make sure</p> <p>15 I share the right screen here for you. Op, there we</p> <p>16 go, 188.</p> <p>17 BY MR. STAMEY:</p> <p>18 Q And so, Exhibit 188, do you recall discussing</p> <p>19 this with Mr. Moulton earlier, right?</p> <p>20 A Yes.</p> <p>21 Q And this is where you -- you brought up the</p> <p>22 issue regarding, you know, what happens if they -- they</p> <p>23 don't work an entire week, correct?</p> <p>24 A I believe so.</p> <p>25 Q And you -- you brought this up with</p>
<p style="text-align: right;">Page 91</p> <p>1 they came back to work for us stateside, or if they had</p> <p>2 standby pay before they left, or at any time that they</p> <p>3 were here stateside, that it would be a different hourly</p> <p>4 rate than their hourly rate for Puerto Rico.</p> <p>5 Q Anthony, can you bring up Exhibit 52?</p> <p>6 Actually, never mind scratch that, Anthony. You talked</p> <p>7 a little bit with Mr. Moulton about orientations and</p> <p>8 presenting, and I believe you mentioned some people that</p> <p>9 were at the orientations, I didn't hear Mr. Whitesell's</p> <p>10 name. Was Mr. Whitself ever at the orientations?</p> <p>11 A Yes, initially he was at every orientation.</p> <p>12 At some point it got to be -- we were having them so</p> <p>13 often and he was very busy at that point. So he would</p> <p>14 send -- another member of the management team would</p> <p>15 always be present with me during that time whether it</p> <p>16 was Scott Shoulders, or himself, or another -- Jeremy,</p> <p>17 any of those folks that were a part of the -- the</p> <p>18 management team, if he was not there. That first</p> <p>19 orientation, it was an all hands-on deck, because it was</p> <p>20 huge.</p> <p>21 MR. STAMEY: Anthony, if you could bring up</p> <p>22 Exhibit 188.</p> <p>23 MR. ARTEAGA: Okay, 188. I don't have 188.</p> <p>24 That's a new exhibit.</p> <p>25 MR. STAMEY: Okay. That would -- Anthony, that</p>	<p style="text-align: right;">Page 93</p> <p>1 Mr. Beagle. Why did you decide to bring it up with</p> <p>2 Mr. Beagle, specifically?</p> <p>3 A Well, Mr. Beagle and Alex Kalman were the</p> <p>4 Paycom experts on -- we had not been with Cobra and</p> <p>5 Mammoth very long, so we were still fairly new to the</p> <p>6 Paycom software. And I was hoping beyond hope that</p> <p>7 there was a way Paycom was going to be able to do all of</p> <p>8 this for us automatically.</p> <p>9 Q And ultimately that's not what happened?</p> <p>10 A Not what happened. No.</p> <p>11 Q We've talked a good amount about JD Kinsey.</p> <p>12 What were your impressions generally about his ability</p> <p>13 to do his job?</p> <p>14 A So JD was a nice guy, but to be honest, I felt</p> <p>15 like he got the job because his dad was the VP. And his</p> <p>16 dad wanted him to make a ton of money in Puerto Rico, so</p> <p>17 he sent him down there and he had had zero experience in</p> <p>18 doing what we do. He had zero experience in payroll and</p> <p>19 HR, to my knowledge. And while he's relatively</p> <p>20 intelligent, he was fairly lazy, and wanted to do what</p> <p>21 was the easiest for JD and didn't really want to conform</p> <p>22 to the reasons that we -- he wasn't really concerned</p> <p>23 about why we needed it a certain way. It was more of</p> <p>24 what -- what he can do. And I think he bit off more</p> <p>25 than he could chew, and he didn't want to let Daddy know</p>

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<p style="text-align: right;">Page 94</p> <p>1 that. That was my opinion.</p> <p>2 Q So what are some of the mistakes that you can</p> <p>3 recall that JD made regularly on the payroll process,</p> <p>4 for people that were working in Puerto Rico?</p> <p>5 MR. MOULTON: Objection, form.</p> <p>6 A I know that during the correction process, he</p> <p>7 would miss folks that had needed to be added due to not</p> <p>8 working the full 14 days. He was also doing a lot -- a</p> <p>9 larger volume than I was because he was trying to do for</p> <p>10 Higher Power and Five Star, so I give him that, for</p> <p>11 sure. He was doing a larger volume. But I was just</p> <p>12 double checking him to make sure that folks did not get</p> <p>13 left off the corrections spreadsheet prior to payroll</p> <p>14 being submitted. You know, later on, I think there were</p> <p>15 some other errors, but those were the ones early on that</p> <p>16 I noticed.</p> <p>17 Q Now, the correction spreadsheets we were</p> <p>18 talking about earlier that had the gross upper day rate</p> <p>19 adjustments on them. Once you had collected the names</p> <p>20 for certain individuals where you had identified a</p> <p>21 potential adjustment, where would you send that</p> <p>22 information?</p> <p>23 A Ultimately it went to Alex Kalman.</p> <p>24 Q Okay. And -- did you say something Dave?</p> <p>25 MR. MOULTON: No, I did not.</p>	<p style="text-align: right;">Page 96</p> <p>1 Puerto Rico to work for Five Star, were they happy about</p> <p>2 the work, unhappy? What was your impression?</p> <p>3 MR. MOULTON: Objection, form.</p> <p>4 A Overall, I think everyone was okay.</p> <p>5 I don't -- typical complaints as far as the tax</p> <p>6 situations, the -- the housing, or having a room with</p> <p>7 this one or that one, you know, typical cry baby type</p> <p>8 stuff. Is what I would call it. Linemen are really big</p> <p>9 babies, in case you all didn't know. But as far as</p> <p>10 legitimate safety or -- you know, legitimate concerns,</p> <p>11 I can remember a few. But nothing that had to do with</p> <p>12 day-rates, or hourly rates, or per diem, or anything</p> <p>13 like that,</p> <p>14 Q Were the guys excited to have to work of</p> <p>15 Puerto Rico?</p> <p>16 A Oh, yes. Yes, they really were. For the most</p> <p>17 part, you know, the orientations were a lot of fun.</p> <p>18 Everyone was really excited, they were playing practical</p> <p>19 jokes, and laughing and having a lot of fun in the</p> <p>20 beginning. Well, at every orientation, just about. You</p> <p>21 know, as -- at every orientation, we knew a little bit</p> <p>22 more about what to tell them to expect. You know, it</p> <p>23 became a big joke about watching for the drivers over</p> <p>24 there because I guess our biggest safety issues ended up</p> <p>25 being driving, and -- and vehicle accidents, and things</p>
<p style="text-align: right;">Page 95</p> <p>1 Q All right. And who ultimately had approval</p> <p>2 over the decision to actually make the adjustments on</p> <p>3 the payroll?</p> <p>4 A I would assume Jeff or Alex was the last ones</p> <p>5 to -- to handle it before submitting through Paycom.</p> <p>6 Q Okay. But do you actually know one way or the</p> <p>7 other?</p> <p>8 A I don't.</p> <p>9 Q Okay. Once Mr. Beagle had discussed putting</p> <p>10 in the process for the adjustments -- the adjust -- the</p> <p>11 day-rate adjustments, did you ever have any concerns</p> <p>12 about the legality of the pay plan at that point?</p> <p>13 A No, it wasn't anything to do with that. It</p> <p>14 was just the amount of work that it was going to be on</p> <p>15 everyone to -- to process and make it all happen, was my</p> <p>16 only concern.</p> <p>17 Q You were pretty familiar with most of the men</p> <p>18 that Five Star sent over to Puerto Rico, right?</p> <p>19 A Initially, for sure.</p> <p>20 Q And did they communicate with you pretty</p> <p>21 regularly about how things were going over there?</p> <p>22 MR. MOULTON: Objection, form.</p> <p>23 A I received 5:00 a.m. Sunday morning phone</p> <p>24 calls. I received constant phone calls from down there.</p> <p>25 Q Overall were the men who had gone over to</p>	<p style="text-align: right;">Page 97</p> <p>1 like that. So those were always things that we had a</p> <p>2 lot of fun with, you know, to -- to explain during an</p> <p>3 orientation, to talk about. And they were -- so they</p> <p>4 seemed very eager and grateful.</p> <p>5 MR. STAMEY: Dave, I'll pass the witness.</p> <p>6 MR. MOULTON: We'll also pass. Thank you very</p> <p>7 much, Ms. Davis. We appreciate you taking time out</p> <p>8 for us today.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 COURT REPORTER: All right. And before we go</p> <p>11 off the record, I'm going to get order information.</p> <p>12 Mr. Moulton, how did you want your copy of the</p> <p>13 transcript?</p> <p>14 MR. MOULTON: We'll do like the electronic</p> <p>15 package.</p> <p>16 COURT REPORTER: Okay. And did you want to</p> <p>17 copy of the video?</p> <p>18 MR. MOULTON: Oh yeah. Absolutely, video and</p> <p>19 synced.</p> <p>20 COURT REPORTER: All right. And Mr. Stamey,</p> <p>21 how did you want your copy of the transcript?</p> <p>22 MR. STAMEY: So for the witness, she wants to</p> <p>23 read and sign.</p> <p>24 COURT REPORTER: Okay.</p> <p>25 MR. STAMEY: And then for the defendants, we do</p>

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1 want a copy -- electronic copy of the transcript.
2 COURT REPORTER: All right.
3 MR. STAMEY: And we would like the video, also
4 synced.
5 COURT REPORTER: All right. We can go off
6 record.
7 MR. MOULTON: And before we end, can we -- did
8 we end on 194? Is that --
9 COURT REPORTER: Yes.
10 MR. MOULTON: Is that right?
11 MR. STAMEY: Yes.
12 MR. MOULTON: Okay. All right. I'll send you
13 over all the exhibits that the plaintiffs used and
14 then I'm assuming, Parish, you'll be sending
15 y'all's?
16 MR. MOULTON: Yes, we will. Would it be okay
17 if I could have Sophie's e-mail address so I could
18 e-mail them -- the exhibits to her?
19 VIDEOGRAPHER: This concludes the deposition of
20 Missy Davis. Going off the record at 12:19 p.m.
21 (DEPOSITION CONCLUDED AT 12:19 P.M.)
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CERTIFICATE OF REPORTER

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3
4 I do hereby certify that the witness in the foregoing
5 transcript was taken on the date, and at the time and
6 place set out on the Title page here of by me after
7 first being duly sworn to testify the truth, the whole
8 truth, and nothing but the truth; and that the said
9 matter was recorded digitally by me and then reduced to
10 type written form under my direction, and constitutes a
11 true record of the transcript as taken, all to the best
12 of my skill and ability. I certify that I am not a
13 relative or employee of either counsel, and that I am in
14 no way interested financially, directly or indirectly,
15 in this action.
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22 SOPHIE JONES,
23 COURT REPORTER/NOTARY
24 MY COMMISSION EXPIRES ON: 10/04/2029
25 SUBMITTED ON: 05/09/2022